# (26,448)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1917.

# No. 981.

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W. A. SULLIVAN, PLAINTIFF IN ERROR,

*vs.*

THE CITY OF SHREVEPORT.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a UNITED STATES OF AMERICA,
*State of Louisiana:*

Supreme Court of the State of Louisiana.

No. 22822.

W. A. SULLIVAN, Plaintiff-in-error,

vs.

CITY OF SHREVEPORT, Defendant-in-error.

Edward Hughes Randolph, for Plaintiff-in-error.
Lewell C. Butler, City Attorney, City of Shreveport, for Defendant-in-error.

Writ of Error to the Supreme Court of the State of Louisiana, from the Supreme Court of the United States of America, Returnable at the City of Washington, D. C., Within Thirty (30) Days from the 26th Day of March, A. D. 1918.

TRANSCRIPT OF RECORD.

1 Proceedings Had in the City Court of Shreveport, Fourth Ward, Caddo Parish, Louisiana, as per Præcipe of Counsel, to Be Found at Page 115 of This Transcript.

*Affidavit.*

Docket No. 328.

THE CITY OF SHREVEPORT

versus

W. A. SULLIVAN.

STATE OF LOUISIANA,
*Parish of Caddo,*
*City of Shreveport:*

Personally came and appeared before D. B. Samuel, Judge of the City Court of the City of Shreveport, the undersigned Abe Goodman, who, being duly sworn, deposes and says that W. A. Sullivan on the 29th day of June, 1917, within the limits of the City of Shreveport, Louisiana, being the Superintendent of the Street Railway in the City of Shreveport, did fail to provide a Conductor and a motorman two separate persons for each Street Car operated on

the Allendale line of said Railway in said City, and did fail to have said Conductor and Motorman on said car when in use after half past seven in the morning.

In violation of the Ordinances of the City of Shreveport, La., in such cases made and provided, and against the peace and dignity of the same, and therefore deponent prays that the aforesaid W. A. Sullivan may be arrested and dealt with according to said Ordinances.

ABE GOODMAN.

Sworn to and subscribed before me this 30th day of June, 1917.

D. B. SAMUEL,
*City Judge.*

Endorsed: Filed June 30th, 1917, D. B. Samuel, Judge.

I hereby certify that the above and foregoing is a true and correct copy of the affidavit filed in the above numbered and entitled cause.

(Signed) D. B. SAMUEL,
*Judge of the City Court.*

2 *Motion to Quash.*

In the City Court of Shreveport, Fourth Ward, Caddo Parish, Louisiana.

No. 328.

CITY OF SHREVEPORT

vs.

W. A. SULLIVAN.

Now comes W. A. Sullivan, defendant herein, and files this his demurrer or motion to quash the affidavit herein filed against him and says:

I.

That the pretended ordinance upon which the charge herein made against him is based is null and void because never adopted or passed by the City Council of the City of Shreveport and because if so adopted or passed, which is specially denied, same is uncertain, indefinite and lacking in precision or not certain to a common intent.

II.

In the alternative and in event the above pleas and defenses are overruled this defendant says that the said so called ordinance is illegal, null and void and of no effect because the City Council of

the City of Shreveport had no power to pass and has no power to enforce such an ordinance, same being unreasonable, unwarranted and arbitrary as applied to the safety type of cars with the equipment the Shreveport Railways Company, of which this defendant is the General Manager, operated on the date named in the affidavit on its Allendale Line in the City of Shreveport or proposes to operate on its light traffic lines in said City.

This defendant shows that cars of the safety type operated on the date named in said affidavit and proposed to be operated by this defendant's said company can be and were operated with as much safety for its passengers and the public and with as much comfort and convenience for its passengers and the public with one
3 operative only as can cars manned and operated by both a conductor and motorman.

That the employment of two men on such cars, one of them adding nothing to the safety, comfort or convenience of passengers or the public, would entail upon said company expense amounting to not less than Four Thousand dollars per annum, based on the number of such cars now in operation, which said expense would increase at the rate of not less than Fifteen Hundred dollars per annum for each car that may be added and put in service.

That said operatives could and would be used otherwise in improving the service to the advantage of the public.

That such expense would be unnecessary, unwarranted and unreasonable and that the enforcement of such an ordinance would deprive said defendant's corporation of its property without due process of law and would be a taking of private property not for public use and without adequate compensation in violation of the articles of the Constitution of the State of Louisiana and in violation of the Fourteenth amendment to the Constitution of the United States.

Wherefore, defendant prays that said pretended ordinance be declared illegal, null and void and unconstitutional and he be discharged hence with costs and for all other decrees necessary and for general relief.

WISE, RANDOLPH, RENDALL & FREYER,
*Attorneys for Defendant.*

Endorsed: Filed July 7, 1917. D. B. Samuels, Judge.

I, David B. Samuel, Judge of the City Court of the City of Shreveport, hereby certify that the above and foregoing is a true and correct copy of the Motion to Quash, filed in the above numbered and entitled cause.

(Signed) D. B. SAMUEL,
*Judge of the City Court.*

4 *Motion to Reopen Case.*

In the City Court, Shreveport, Louisiana, Hon. D. B. Samuel, Judge.

No. 328.

CITY OF SHREVEPORT
VS.
W. A. SULLIVAN.

Now into Court come the City of Shreveport, through its undersigned counsel, and moves the court that the case be reopened for taking additional evidence, said evidence to be restricted to the following purposes, to-wit:

That the so called safety type proposed to be used by the defendant is not as safe as the old style proposed to be dispensed with by the said defendant.

That the plaintiff may introduce evidence to prove that certain parts, or mechanism, of the so called safety type proposed to be used are inferior in construction to the old style cars in case of the necessity of sudden stops; that it is more dangerous and will take more time to stop the car than under the old style.

Wherefore, premises considered, plaintiff prays the court that the case may be reopened for the restricted purpose above outlined, and for all other orders and decrees necessary in the premises, and for general relief.

J. F. PHILLIPS,
*Counsel for Plaintiff and Mover.*

Endorsed: Filed July 17th, 1917. D. B. Samuel, Judge.

I, David B. Samuel, judge of the City Court of the City of Shreveport, hereby certify that the above and foregoing is a true and correct copy of the Motion to reopen filed in the above numbered and entitled cause.

(Signed) D. B. SAMUEL,
*Judge of the City Court.*

5 Endorsed: Filed July 7th, 1917. D. B. Samuels, Judge.

*Proceedings of the Council of March* 12, 1907, *April* 9, 1907, *and May* 14*th*, 1907.

March 12th, 1907.

An Ordinance, by Mr. Florshiem, requiring Street Railway owners to provide a conductor and motorman for each car operated on street railways.

Section 1. Be it ordained by the City Council of the City of Shreveport, in legal and regular session convened, that hereafter

all owners of street railways in this city shall provide a conductor and motorman, two separate persons, for each car operated and they shall be on said car at all times when in use.

Section 2. Be it ordained, etc., that each violation of this ordinance by any such street railway owner or owners in this city shall constitute a separate offense, and upon conviction before any court of competent jurisdiction said owner or owners shall be fined not less than $25.00 and not more than $100.00 and in default of payment shall work out the same on the streets and alleys and other public works of the City of Shreveport at the rate of $1.00 per day for each day of labor performed.

Read and as read passed its first reading by the following vote: Ayes—Able, Allen, Conger, Currie Dambly, Florsheim, Friend, Hoyer, Jordan, Reisor, Thoman, Tusten, White. Nays—None.

April 9th, 1907.

An Ordinance Requiring Street Railway Owners to Provide a Conductor and Motorman for Each Car Operated on Street Railways.

(Introduced and passed first reading on March 12th, and appears in full in the minutes of that date.)

6 Ordinance referred back to the railway committee.

May 14th, 1907.

City Ordinance, by Mr. Florsheim, requiring Street Railway Superintendents, owner or owners to provide a conductor and motorman for each car operated on street railways.

(Read and as read, passed through the first reading at a meeting of the Council held April 9th, 1907, and appears in full in the minutes of that date.)

Read the second and third times and passed through both readings, being adopted with the word "Superintendent" added to owner or owners and was adopted by the following vote: Ayes—Able, Allen, Conger Dambly, Emery, Florsheim, Friend, Hoyer, Ingersoll, Jordan, Reisor Thoman, Tusten, White. Nays—None.

Prior to the vote for adoption of the above ordinance Mr. Jordan introduced the following: That the ordinance requiring a conductor and a motorman on street cars be amended by reading that motorman and conductor be obliged to go on each car at 7:30 o'clock in the morning, instead of all time. Carried, Mr. Florsheim being the only one voting nay.

(Signed) D. G. FRANTZ,
*Auditor & ex Officio Secretary.*

(Signed) E. R. BERNSTEIN, *Mayor.*

I hereby certify that the foregoing are true copies of Ordinances recorded on Pages 424, 437 and 451 of Ordinance Book of 1907.

T. H. THURMOND,
*Auditor & ex Officio Secretary.*

I, David B. Samuel, Judge of the City Court of the City of Shreveport, hereby certify that the above and foregoing is a true and correct copy of the ordinance filed in the above numbered and entitled cause.

(Signed) D. B. SAMUEL,
*Judge of the City Court.*

7 *Testimony Taken July 7th, 1917, on Trial of the Motion to Quash.*

City Court.

No. —.

CITY OF SHREVEPORT

vs.

W. A. SULLIVAN.

*Evidence Taken on Trial of Motion to Quash in the Above Numbered and Entitled Cause, on Trial Before the Honorable D. B. Samuel, Judge of the City Court on July 7th, 1917.*

Evidence reported by R. B. Cook, Stenographer.

Appearances:

John F. Phillips, Assistant City Attorney, for the City.
Wise, Randolph, Rendall & Freyer, Attorneys for Defendant.

*Evidence on Behalf of Plaintiff in Motion.*

Counsel for Plaintiff in Motion, defendant in suit, offers in evidence the Minutes of the City Council of the City of Shreveport dated March 17th, 1907, as they relate to the proceedings relative to providing a Conductor and Motorneer on street cars, as shown in Record Book "K," page 424, with leave to substitute a certified copy thereof.

To be filed in Evidence and marked Exhibit "A."

Counsel for Plaintiff in Motion, defendant in suit offers in evidence also the minutes of April 9th, 1907, on the same subject matter, as found in Record Book "K," page 437, with leave to substitute a certified copy thereof.

To be filed in evidence and marked exhibit "B."

Also the Minutes of May 14th, 1907, on the same subject matter as found in Record Book "K," page 451, with leave to substitute a certified copy thereof.

To be filed in evidence and marked exhibit "C."

W. A. SULLIVAN, a witness for Plaintiff in Motion, being first duly sworn, testified as follows:

On direct examination he said:

8 Counsel for Plaintiff in suit, defendant in Motion objects to the evidence of Mr. Sullivan or anyone else in behalf of the Company in so far as it goes to the safety and convenience of the passengers and also as to the expense that is involved or might be involved.

By Court: Admitted subject to the objection.

To which ruling of the Court, counsel for Plaintiff in suit, defendant in motion, excepts and asks that this note stand in lieu of a formal bill of exceptions.

Above objection, ruling of Court and Exception *is* made general to apply to all evidence.

Counsel for Plaintiff in Motion, defendant in suit offers in evidence the admissions covering the merits of the case.

Filed in Evidence and marked Exhibit "D."

By Mr. Rendall:

Q. Mr. Sullivan, as shown by written admission filed in this case it has been agreed, for the purposes of this case, that, on the date stated in the affidavit against you, that you were Superintendent of the Shreveport Railways Company, now without attempting to change or in any way effect the force of that admission, and for the purpose strictly of offering evidence under the demurrer or motion to quash, are you as a matter of fact the General Manager of the Company?

A. I am.

Q. Mr. Sullivan, is your Allendale line, a heavy traffic line or a light traffic line?

A. Light traffic line.

Q. On the day charged in the affidavit, how many cars did you have in operation on that line?

A. Four cars in operation.

Q. It has been agreed that on that day, these cars were being operated with only one employee on them, having no con-

9 ductor on the car—what is the type of those cars, first?

A. They are known as "Safety first" cars.

Q. Safety first cars?

A. Yes sir.

Q. On the day in question you were—on the day in question how were they equipped, with safety devices?

A. They were equipped with air safety devices, automatically operated.

Q. How were they equipped so as to admit or put off passengers?

A. They were equipped with folding steps, and doors, and enter and leave the cars from the front end.

Q. Enter and leave the front end?

A. Yes, sir.

Q. With relation, where was the exit and the entrance, with relation to the position of the man in charge of the car?

A. The man in charge of the car was on the left hand side of the platform, and the entrance and exit is on the left hand side in the direction in which the car is going.

Q. Were the exit and entrance in full view, as the passengers were entering and going out, of the motorman?

A. Yes, sir.

Q. In the matter of starting off the car, after the passengers have entered the car, did the Motorneer have to depend upon any signal bell, or upon any other person, to determine whether or not it was time to move the car up or start forward?

A. He did not, he was the sole party in charge of the car.

Q. Mr. Sullivan, you are—are you not a mechanical engineer?

A. A civil engineer and electrical engineer, not a mechanical engineer.

Q. How long have you been working at your profession?

A. About twenty one or twenty two years.

Q. How long have you been in—how long have you been in the business connected with the operation of street cars, in cities or villages?

A. Since 1898.

Q. Since 1898?

Q. Will you name some of the Companies with which you have been connected?

A. I have been connected with the General Electrical Company when they controlled the street railways.

Q. That is one of the largest concerns in the United States?

A. Yes, sir, that is the largest concern. Then I was with the Ford Baker and Davis, the largest operating engineers at that time. I was entrusted with their Southern properties, which included Little Rock, Birmingham, Nashville, Knoxville, Memphis, Pine Bluff, New Orleans and Houston.

Q. How long have you been connected with the Shreveport Railways Company, and its predecessor, the Shreveport Traction Company?

A. Since April, 1910.

Q. What is your opinion, on the question of whether or not, cars of the type that were used on the Allendale line of the City of Shreveport, on the date named in the affidavit with the equipment that had, can be operated as safely, as conveniently and as comfortably, with regard to the passengers and the public, whether there—where there was, in addition to the motorman a conductor on them, what purpose would the Conductor serve?

A. He could not serve any purpose whatever.

Q. Would his presence on the car, add anything to the safety, comfort, convenience of the public, or the passengers?

A. He would not.

Q. Mr. Sullivan, we have alleged in our plea, setting up the invalidity of the Ordinances, that the employment of a Conductor or use of a Conductor on such cars would entail upon your Company an

expense, so far as the cars now in operation are concerned of at least Four Thousand dollars per annum, is that a fact?

A. To maintain the service of four cars on the Allendale
11 line with two men on the car would increase the expense at least Four Thousand dollars a year.

Q. And suppose that the Company should decide to put on an additional car, what would the expense per year be?

A. About fifteen hundred dollars per car per year.

Q. Now could you, and would you not use these extra men, or unnecessary men on the cars, in your service, in ways to improve or better your service for the public?

A. These surplus men would be used in increasing the service under the two men operation the schedule is slower, and of course under the one man service we double the service, and it would result in benefitting the condition for the public.

Q. That would result in benefitting the public?

A. Yes, sir, and we expect would get more, or some increase in travel.

Q. Mr. Sullivan, have you incurred expenses in any amount in the matter of these cars on the Allendale line?

A. About Fifty five hundred dollars.

Q. You are to-day and since this affidavit was filed, been operating cars on the Allendale line with two men?

A. Yes sir, operating the cars with two men on the Allendale line.

Q. What is the other employee, that is the employee who is not the Motorman to do, what has he been doing?

A. Punching transfers and taking up tickets and making change.

Q. All of which could have been done by the motorman?

A. Yes sir, could have been done very easily by the motorman.

By the Court:

Q. Since you are running the cars with two men on there, you still have the entrance, only in front?

A. Yes, sir, entrance and exit in the front.

Q. Entrance and exit on the front of the car?

A. Yes, sir.

12 By Mr. Randell:

Q. Mr. Sullivan, do you know of other Cities in the United States where they have begun, and are now operating cars on light traffic lines, where they are operated with only one man?

A. They are operated at Ft. Worth, Kansas City, on all the Stone and Webster properties on the coast, and all the Stone and Webster properties in the North, and some in the East, also in Springfield, Missouri; Boston has placed an order for three hundred and fifty cars; Monroe, Louisiana, a municipally owned road has put them in operation.

Q. I will ask you again the question, does the presence of the Conductor, on such a car, add anything to the safety, comfort or convenience of the passengers?

A. It does not.

On cross-examination he said:

By Mr. Phillips:

Q. Mr. Sullivan, you stated in the beginning that this line was a light travelled line?

A. Yes, sir.

Q. Is it not a fact that at certain hours of the day, for instance early in the morning, noon and late in the afternoon, that the travel on this line is heavy?

A. No, not what we call heavy.

Q. What is the size, what is the seating capacity of the cars?

A. These cars, some twenty eight, some thirty two, but of course the travel on the line is not figured during the rush hours, the travel on a line is figured the number of seats you have in the car for the entire day, and that will not average twelve to fifteen per trip, for that reason it is light travelled line.

Q. Is it not a fact that at certain hours of the day, the capacity of the cars is taxed?

A. No, the capacity of those cars is never taxed, but with the present system of two cars it is taxed, but when you double the
13 seating capacity it will not be.

Q. We mean under the arrangements, prior to doubling the service.

A. At six o'clock for about thirty minutes you may have a well loaded car, but the rest of the day you never have a loaded car.

Q. How many cars you run on that line now?

A. Two cars.

Q. Mr. Sullivan, what was the schedule under the old arrangement?

A. Supposed to be twelve, but it was fifteen minutes because they could not make it.

Q. Really made it in fifteen minutes?

A. Yes, sir.

Q Now under the same arrangement, running two cars, with just one man on the front and no conductor, what length of time will it take?

A We do not run with the same schedule.

Q. What length of time will it take to make the trip under the one man system?

A. You ask a question that you will have to let me explain, whether two cars are run or four cars are run, we use the same schedule fifteen minutes to the trip, the same as at present with two men.

Q. Put in two cars under your arrangement?

A. No, sir.

Q. Mr. Sullivan, under your franchise, how many cars are you supposed to run on that line?

A. There is no number of cars specified, says a fifteen minute schedule.

Q. That is what the franchise calls for?

A. Yes sir.

Q. Mr. Sullivan, in case of trouble on the car, where there is only one man, now where would the passengers be protected in case of trouble, with only one man on the car and that man on
14 the front?

A. Be just as much protected as if on the rear end of the car because with the one man car, he can immediately drop the car and go back to the trouble and the car automatically stops, while under the old style car, he would have to wait until he stopped the car.

Q. Now we have an ordinance against spitting on the cars, now in case there is only one man on the car and he is on the front end how would he know, as to a violation of that on the car?

Counsel for Plaintiff in Motion, defendant in suit objects to this question on the ground and for the reason that the answer to same would be irrelevant and immaterial, there being no obligation imposed upon the defendant company, or upon this defendant to enforce the provisions of the City Ordinances in the City of Shreveport, relative to spitting on the cars.

By the Court: The Court overrules the objection for the reason that the defence is that the one man arrangement is just as efficient as the two man arrangement and this question is aimed at inquiring into this, and for the further reason it is the duty of the Defendant Company to provide for the safety and comfort of their passengers and they must do all things that conduce to the convenience and comfort of the passengers.

To which ruling of the Court, Counsel for plaintiff in motion, defendant in suit, excepts and asks that this note stand in lieu of formal bill of exceptions.

A. It is not the duty of the Conductor to do that. It is the duty of the officers, and it is just as much the duty of the passengers to look after that, as it is the conductor?

Q. I asked you, how would the motorman know, if there was anyone in the car smoking?

15 A. Smoking is permitted on cars, on the one man cars.

Q. I will ask you this, Mr. Sullivan, in case we have the Jim Crow law, in the cars segregate the races, now how would the motorman who has his face to the front know as to whether or not that law is being violated under the one man arrangement?

Q. He has every reason to know, he is on a swinging stool, and when loading the passengers he looks back and see the conditions.

Q. But suppose that fifteen or twenty get on at one time, and get in the car, while the car is standing still, the car does not stand still until all of the passengers are seated, regardless of the fact that they have paid their fares, and the front door is closed?

A. It is generally considered that a car is not supposed to move until the passengers are all in the car. One of the rules is that they shall all be seated, before they move the car, but they do not follow it.

Q. The cars stand until they get into the car?

A. Yes, sir, in the body of the car.
Q. And seated?
A. No, sir, into the body of the car.
Q. In case a passenger is on the car and the front door is closed, and the white and colored passengers are all in there together, how would the motorman know that they have been properly seated?
A. The same as a conductor knows, all the conductor does when he sees a bunch get on is that he changes the signs to correspond to the crowd.
Q. He would stop the car and change the signs?
A. Yes sir.
Q. Mr. Sullivan you stated that when you took this other man off of the car that the intention of the company was to use the man in other service?
A. No sir. Of course they have the opportunity of going on the same run, but of course the older men have the choice, and
16 while some of them would probably go to other lines some would be retained there.
Q. So that there would be as many employed in the operation of Four cars as in the operation of two?
A. Yes, sir, approximately.

By the Court:

Q. You would take off no men?
A. No, sir, where we run two cars we would double the service.
Q. The conductor would become Motorman?
A. Yes, sir.

By Mr. Phillips:

Q. Mr. Sullivan, that of course may be good while you are manager but what guaranty is there that these additional cars will be used?
A. We tried to get the Chairman of the Committee to meet us and we offered to put in a written guarantee that we would maintain the service, but we never could get him to meet us.
Q. Regardless of the fact that the Chairman of this Committee did not meet you, eliminate him, what guarantee would the public have that it would be maintained?
A. Our guarantee was to be made to the City, not to the Chairman of a Committee. We told the Council that we would guarantee to put that in writing.
Q. You stated that you all had incurred an expense of fifty five hundred dollars, was that the expense incidental to the preparation of the new cars?
A. Yes, sir, and putting in extra sidings, so as to operate?
Q. How many new cars?
A. Four. We did not buy new cars, took them and put on the safety devices on the present cars and reconstructing them.
Q. These safety devices on these cars, how long will they last?

17 A. Well, I have every reason to believe that they will last twelve to fifteen years, or longer.

Q. With incidental repairs of course?

A. Yes, sir, the Westinghouse Air brake.

Q. Mr. Sullivan, in case of a load of fifteen or twenty people on this line, you stated the duty of the Conductor was to take up tickets, issue transfers &c., now in case fifteen or twenty people got on the car, is it not a fact that it would take more time and take longer to make the run, making a longer schedule, for the Motorman to have to do that, than under the old system?

A. No, sir, practically the opposite, for this reason, we get so many passengers a day to handle, in running two cars and we have to handle them and then we put on four cars to handle the same passengers, and it would increase the schedule instead of decrease it.

Q. That is, if your cars are run?

A. Yes sir. We wanted—we guarantee to run three cars during the light hours of the day and four during the rush.

Q. Leaving out your guarantee, is it not a fact that it would take the Motorman longer to load fifteen or twenty passengers than under the old arrangement?

A. No, sir, not a bit, because under the old system, while the Conductor is working, the motorman is doing nothing? You just reverse the condition, the motorman is doing the while, while the car is standing still, and with the arrangement put in, and after it gets to working, they would handle passengers a great deal faster than under the present arrangement.

Q. Is it not very often a fact that when parties want a transfer that the conductor, after he loads the passengers gets on and issues the transfers?

A. If we find out that he does so, he will loose his job, they may do it, but if found out will loose his job, because the passenger-

18 is supposed to get their transfers when the fares are paid.

By Court:

Q. What cities did you say were using the one man cars?

A. Ft. Worth has had them in use for nearly a year; Seattle, and all of Stone and Websters properties on the Coast and I think that Houston has eighteen cars, Dallas has Twenty four cars ordered, El Paso has ordered, Beaumont has ordered and Monroe has put them in. They had the same time in Monroe that we are having here, but they passed an Ordinance putting them on.

By Mr. Phillips:

Q. Do you testify that when there is a crowd on the car to unload and a crowd to get on, is it not a fact that there would be a jam?

A. You have exactly the same condition, where they do not use the front end, but use the rear end of the car. We were the first people in the South to put doors on the front end of the cars for exits, that was put on by ourselves, to try it out. Lots of cities use only rear entrance.

Q. The rear entrance and exit is divided?

A. No, sir, it was not until two years or probably three years ago here.

Q. Divided?

A. Yes sir, by our own doing, we simply changed from one end cars which we used up until then, and used the other end. The conditions are identically the same.

On redirect examination he said:

By Mr. Rendall:

Q. Mr. Sullivan, you told us in your direct examination that these cars were equipped with proper safety devices, now will you describe them in more or less detail?

A. The single truck car, it was never considered practicable to put air brakes on those cars. This safety appliance is a new
19 thing, just come out. Ft. Worth is the longest to use it that I know of, but this is an air appliance on the car, that is attached to the controller, and the minute the motorman takes his hand off of the controller, no matter where he is; if he saw a wagon or anything in front of him, under the old system he had to shut off, cut off the power, apply the brakes and sand the rail, three distinct things to do, before he could get the brakes, where with this appliance, he takes his hand off of the controller, the brakes are set, the power goes off, the rail is sanded, and doors of the car are locked all with one movement. You can make a stop with one of these cars, with this appliance on it going at twelve miles an hour, or anywhere from ten to twelve miles an hour, within fifty to sixty feet. Now another big feature, is the safety appliance, doing away with two men control. Our accidents today are caused in most instances in regard to the signals of the conductor and motorman. Under this arrangement there is no signal. The motorman is the whole thing, has control. On single truck cars you use the front end. On double truck cars you use the same, but have the exit and entrance at the back because *our* you have sufficient swing to carry the platform. This car today is used, the front end car and this appliance. I do not think that there is a city but what had this trouble. The accidents are reduced with this class of cars, and at the meeting of the Association they were universally recommended for operation all over the country, and only two cities kick, Shreveport and Monroe.

Q. And I understand you to say that the City Council of Monroe has adopted it, for its municipally owned railroad?

A. Yes, sir, the Council of Monroe had a Committee to go and investigate it, and there was a man through here going to Ft. Worth to look it over, and that they were putting it in in Monroe.

20 On cross examination he said:

By Mr. Phillips:

Q. He told you that they were going to put it in operation?

A. It is in operation there, they have passed the ordinance, but it has not come up for adoption yet.

Q. In the one man car, in case of an accident, where it was necessary for the people to get out of the car, they would have to come to the front to open the door?

A. The minute that the hand is removed from the comptroller the car is put into the emergency, and the doors are unlocked so all they have to do would be to push it open, and that is a good feature, because when you throw the door open that is an invitation to jump. The door is automatically unlocked, but don't open all you have to do is to walk up against them and out you go.

Plaintiff closes.

JOHN J. KEEL, a witness for Plaintiff in suit defendant in Motion being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Phillips:

Q. Mr. Keel, the defendant claims that the safety first type of car, can be operated and was operated with as much safety to the passengers and as convenient for the passengers as with one having a conductor and motorman, I will ask you what you think of that? Are you a patron of this line in controversy?

A. Yes sir.

Q. You have ridden under the old arrangement?

A. Yes sir.

Q. Also under the new?

A. Yes sir.

Q. What do you say Mr. Keel, about the jamming of the passengers in loading and unloading under the one man arrangement?

A. Well in loading and unloading under the one man arrangement they all get jammed together, unless some one makes
21 the people standing on the street wait until the crowd on there gets off otherwise there is a jam—some getting on and some getting off.

Q. That has occurred under the new arrangement?

A. Yes, sir.

Q. I will ask you Mr. Keel, in regard to the segregation of the races under the old plan and where they all went in on the rear platform and the negroes took the back seats right immediately on going into the car, and how that is under the new system, and whether the white and colored are thrown together in the front or not?

A. If there are any ladies on the car of course they are thrown together, and not being enough seats no one seems to pay any attention to the segregation. The motorman has the fares to look after, he sees that the fares are deposited in the slot and he proceeds to operate his car.

Q. Would you regard then, that part of it, as comfortable to the travelling public, as comfortable as it was under the old system?

A. No, sir.

Q. Was it as comfortable and as convenient under the present arrangement as the old?

A. No, sir, with white people standing up in the car, or even seated and the negroes passing through loading and unloading is certainly not as comfortable nor as convenient.

On cross-examination he said:

By Mr. Rendall:

Q. Have you ever been in Southern cities where negroes were assigned front seats on cars, instead of rear seats?

A. You mean seats?

Q. Yes, where the negro passengers under the law are provided in street cars with separate seats, segregated, where they were
22 assigned seats in the front of the car, instead of the rear?

A. No, sir.

Q. Do you know what the practice is in Alabama, on that proposition?

A. No, sir, I do not.

Q. Do you know what the practice is in Chattanooga, Tenn.?

A. No, sir.

Q. Your position is based on the assumption or theory that the rear of the car is the proper and only place in which to put the negroes?

A. Not necessarily so, but I believe that that is the most comfortable place to put them back there to place the negroes in the rear. Be more comfortable to put a pole cat in the rear than to put him in front of you.

Q. Of course you are bound to recognize under the law Mr. Keel, under the laws of the State of Louisiana and the laws of the United States public service corporations are bound to serve them with equal accomodations both races, it would be much more convenient and comfortable if we were not obliged to haul them on the cars with white people, but dealing with the case as we have it, as we are obliged to carry them on the cars, you think it is preferable to put them in the rear?

A. Yes, sir, and load from the rear.

Q. Now Mr. Keel, you spoke of the jamming in the loading of the cars, that is when there is quite a number of passengers or people waiting to become passengers on the car, and a lot to get off, and that they frequently jam, did you not?

A. Yes sir, I did not say frequently.

Q. At times?

A. Yes sir.

Q. Was not any worse than the conditions which you have to meet, say at a base ball game?

23 A. No, sir.

Q. Under the two man arrangement of cars, no worse?
A. No, sir, not at base ball.
Q. Or at the theatre?
A. No, sir.
Q. Or say on a Circus day?
A. Yes sir, and on ordinary days.

P. E. TOWNSLEY, a witness for the Plaintiff in suit, defendant in motion, being first duly sworn, testifies as follows:

On direct examination he said:

By Mr. Phillips:

Q. Mr. Townsley, you are a citizen of Allendale?
A. Yes sir.
Q. A patron of this car line in controversy?
A. Yes, sir, to some extent.
Q. Now go ahead and tell the court, the circumstances that you related to me a-hile ago?
A. What I wish to say, is that we are fighting Jim Crow law more than anything else. As I stated to Counsel awhile ago, was the condition that occurs about six o'clock, I was on the car and there were some ladies standing, as the seats were all full and up here at Renfro's there were eight or ten negroes got on and they pushed the ladies to one side to get by, and in getting off down about the Laundry the same condition applies, they jam.

By Court:

Q. When they get inside, are the ladies seated?
A. Some of the ladies are seated and some standing up.
Q. Some standing up?
A. Yes, sir, and these negroes pass by. I want to say that I was on the car the other night and I heard some talk that did not sound just good, I heard people say that if the burly headed negroes
24 shoved against his wife there would be trouble.
Q. Mr. Townsley, you—do you consider the one man arrangement as comfortable, and as convenient for the passengers, as under the old arrangement?
A. No, sir, I do not.

On cross-examination he said:

By Mr. Rendall:

Q. Mr. Townsley, don't you think the situation would be improved by the operation of four cars on the line, being operated with one man, over the two cars with two men on them?
A. Mr. Rendall, we have no assurance that that will be done, only said he would give us three cars.
Q. You agree with me on the proposition, if we are bound to do that?

A. No, sir, not as long as you take in this negro question. I was born and raised in the North, but I believe in dealing with conditions as they are here.

Q. That is the situation that we have to deal with?

A. Yes sir.

Q. The law absolutely imposes on us the duty of making no discrimination between the races, that is the root of the whole trouble?

A. Yes sir, to a great extent. The races are mixed too indiscriminately and I cannot understand how one man can do two men's work. I have been on the other lines, been out to the Fair Grounds and would get on the car, and the conductor did not give me any transfer, and later, not at the time I gave him the money, he would come through and give transfers. Then another statement, if I am permitted to make, I think that the same condition should exist over the city, don't try to put it on us alone.

Q. You mean you do not want any discrimination practiced against your neighborhood?

25 A. That is what we mean.

I hereby certify that the above and foregoing is a true and correct translation of my Stenographic notes taken on the trial of the Motion to Quash, in the above numbered and entitled cause.

(Signed) R. B. COOK,
*Stenographer.*

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Endorsed: Filed July 26th., 1917, D. B. Samuel, Judge.

27 City Court, City of Shreveport.

No. —.

CITY OF SHREVEPORT

vs.

W. A. SULLIVAN.

*Evidence Taken on the Trial of the Above Numbered and Entitled Cause on Trial Before the Honorable D. B. Samuels, Judge of the City Court, After Case was Reopened, on Trial on July 20th, 1917.*

Evidence reported by R. B. Cook & Co., Stenographers.

Appearances:

John F. Phillips, Assistant City Attorney, for City.
Wise, Randolph, Rendall & Freyer, Attorneys for Defendants.

*Plaintiff's Evidence.*

T. E. SCHERMERHORN, a witness for the City, being first duly sworn testified as follows:

On direct examination he said:

By Mr. Phillips:

Q. Mr. Schermerhorn, you are a resident of the City of Shreveport?
A. Yes sir.
Q. Are you a patron of the Allendale Car line?
A. Yes sir.
Q. You ride on it to and from your work?
A. Yes sir.
Q. Did you ride on it during the time that the one man car was operated?
A. I did.
Q. Mr. Schermerhorn, are you familiar with the position of the motorman, where he sits, under the one man arrangement?
A. I am.
Q. I believe, for instance the vestibule is circular and in the center there is a window?
A. Yes sir.
Q. Now where does the motorman sit, with regard to the window across the front?
A. To the left.
Q. To the left of the window?
A. Yes sir.

Q. With the one man car arrangement in operation, where is the cash box, where the fares are deposited situated?

A. To the motorman's right, on an up right.

Q. How is that, with regard to the window in the center of the car?

A. As well as I remember it, it is about the center of the car.

Q. The center of the platform?

A. Yes sir, probably a little to the right.

Q. Is there any hand brake on these cars?

A. Yes sir.

Q. Now where is the position of the hand brake?

A. It is to the right—on the right side of the cash box from the motorman.

Q. To the right of the window?

A. Yes sir.

Q. When this cash box is there, suppose that the motorman, that his air failed to work, and it would be necessary to stop the car by the use of the hand brake, how could he reach the hand brake from where he was sitting? Could he reach it without getting up?

A. No, sir, he cannot.

Q. What would keep him from reaching it?

A. The cash box would be in the way, and I think that the distance is a little too far.

Q. Then it would be necessary for him to leave his regular post of duty and step around to the hand brake?

A. Yes sir.

Q. Have you been on these cars, at any time when the air failed to work?

29 A. I have.

Q. Do you remember on what car, and about what date?

A. It was the second week of the operation of these cars, about Tuesday or Wednesday.

Q. It was under the one man arrangement?

A. Yes sir.

Q. Now tell the Court the circumstances?

A. Well, this was an out bound car, and when it reached the over head bridge on Anna street, the motorman had no bell for a stop until he reached Pierre Avenue, and after he passed the last stop, before reaching Pierre Avenue, he had a bell, within a reasonable distance to stop and he shut off the current and applied the air, and he had no air. He made two or three attempts to apply the air and he had none, and the car swung around the corner of Anna and Pierre Avenue, at I do not know what rate of speed, but as fast as those cars will go on nine points. The motorman in that case, did not even attempt to get the hand brake because he did not have time, after he made two or three attempts to apply the air, and the car swung around the curve and come to a stop of its own motion. It rolled nearly to Logan street before it stopped.

Q. If there had been a wagon or an automobile in the way would it have been impossible to have stopped the car?

A. Yes, sir, absolutely impossible, he would have hit a wagon or an automobile, or whatever was in the way.

Q. This car, I believe you stated ran then from the top of the over head bridge going down that incline—how far is that from the beginning of the incline to Pierre Avenue?

A. It is about two and a half blocks. Two stops between the over head bridge and Pierre Avenue. There is one block to Allen Avenue, and there is a long block and a stop in the middle of that block.

Q. Was this car going very fast?

A. As fast as they will go on nine points, with the lever I
30 think wide open.

Q. In other words at an average good rate of speed?

A. Yes sir, with a small car going down hill.

On cross-examination he said:

By Mr. Rendall:

Q. Mr. Schermerhorn, what is your business?

A. I am a bookkeeper for the Standard Oil Company.

Q. Have you ever operated electric street cars?

A. No, sir.

Q. You have ridden on them?

A. Yes, sir.

Q. Now on the occasion when you said that you saw the brakes fail to work two or three weeks ago, was there any reason for the motorman to bring his car to a stop, after he left the Anna street bridge, before he came to Pierre Avenue?

A. No, sir, no reason to stop, until he got the button for the stop at the corner of Pierre Avenue and Anna street.

Q. You say that the air failed to work?

A. Yes sir.

Q. Was there any conductor on that car?

A. There was not.

Q. If there had been a conductor on the car, do you suppose that he could have supplied the defect in the air?

A. I do not suppose h · could, he could not if he had been on the rear end, no sir, he could not.

Q. Then his presence would not have added anything to the situation at all?

A. No, sir.

Q. You cannot conceive how he could have helped it?

A. No, sir, not being on the rear end, of course if he had been on the front end he could have grabbed the hand brake.

Q. Have you ridden on the old type cars operated there before they put in the new ones?

31 A. Yes sir, many times.

Q. Would the situation have been any better, could the car have been stopped under the circumstances which you have described any more quickly?

A. Yes, sir, in the old style car the motorman would have had his

hand on the brake, he would not have had to depend upon something that was uncertain.

Q. You think that the air brake is inefficient as compared to the hand brake?

A. Not altogether, any brake I suppose will fail to work, though I have the first time to see a hand brake fail to work.

Q. You, individually would rather *than* the company would use the hand brake, rather than the air brakes, with the old style car with the motorman on the front end and the conductor on the rear?

A. I prefer that.

Q. You, individually, prefer the old style car, with the motorman on the front end and the conductor on the rear?

A. Yes, sir.

Q. You think that that adds something to the safety of the passengers?

A. I do.

Q. Notwithstanding that these cars were equipped with hand brakes instead of air brakes?

A. Yes, sir.

Q. Now I wish you would examine the picture which I hand you, the picture appearing on page 1055 of the Electric Railway Journal in its issue of June 9th, 1917, and tell the Court whether or not that is a fair representation of the arrangements of the cars that the Shreveport Railways Company were operating?

(Showing witness picture.)

A. No, sir, that does not represent the cars they were trying
32 out on the Allendale line.

Q. I do not mean an exact picture, but is it not a fair representation of the arrangements of the front end of the cars?

A. No, sir.

Q. It does not?

A. Well, yes, with the exception of the hand brake.

Q. With the exception of the hand brake?

A. Yes, sir.

Q. What is the difference between the position of the hand brake on our cars and this shown here?

A. There is practically no difference in the position, the brake is further towards the end of the car than this brake here, closer to the end of the car.

Q. The end or the side?

A. The end.

Q. What difficulty is there in the motorman getting to his brake on the car ?

A. The cash box is practically between him and this brake.

Q. Your idea is that according to the arrangement of the front of these cars, the cash box, or fare receiver is in an improper place, *as* that the idea?

A. Yes sir, it is.

Q. Sir?

A. It is.

Q. Now I will ask you, if this arrangement that we have in these cars is not similar to that that you have found in Interurbans and fast trains?

A. I do not know, I have never had any experience with them, never ridden — one.

Q. You are bound to admit, I take it, that the equipment which has both air brake and hand brake is an improvement over the old style car that had nothing but the hand brake?

A. Yes, sir.

Q. Is your objection to the operation of this one man type of cars based solely on that one instance that you have referred to?

A. No, sir.

Q. Have you ridden frequently on those cars?

A. Yes, sir.

Q. What have you to say on the other trips?

A. Well, only similar to the other evidence put in the record, the distasteful feature of mixing the white and black, and then the safety and comfort of the passengers.

Q. Do you know what the other evidence introduced in this case — do you?

A. I think I do.

Q. Do you or not?

A. Yes I do.

Q. You adopt that as correct?

A. Yes, sir.

Q. On the other features involved in this case?

A. Yes, sir.

On redirect examination he said:

By Mr. Phillips:

Q. Mr. Schermerhorn, on the old style car, where does the motorman stand with respect to the center of the front of the platform?

A. Well, practically in the center of the car, under the old style about the center of the width of the car.

Q. Right in front of the window?

A. Yes, sir, in front of the center window.

Q. How far from where he is standing in his work, is it necessary for him to move to use the hand brake in case the air fails to work?

A. No, sir, it is not necessary for him to move.

Q. Just reach it?

A. Yes, sir, he is standing there with his hand on the brake all the time, he is in a position all the time to turn on the brake.

Q. The air brake is between the hand brake and the motorman and if the air fails to work all he has to do is to reach over and use the hand brake, under the old system?

A. Yes, sir, under the old arrangement?

On recross-examination he said:

By Mr. Rendall:

Q. Mr. Schermerhorn, where, under the old style cars did the motorman stand?
A. In the center of the car.
Q. What car was that, do you remember, where you say the air failed to work?
A. I do not remember.
Q. Do you know who the motorman was?
A. No, sir.
Q. Do you know what day it was?
A. It was either Tuesday or Wednesday of the second week of the trial of the cars.
Q. Tuesday or Wednesday of the second week?
A. Yes, sir, I did not set it down.
Q. Was it in the morning, noon or night?
A It was about five forty five P. M.
Q. Can you describe the motorman to me, so that we can identify him?
A. Well, he was a little taller than I am, and a little stouter than I am.
Q. A young man?
A. Yes, sir.
Q. It was about five forty five P. M.?
A. Yes, sir, about that time. I left the office at five and fooled along up the street and caught a car and went home. It was not later than six o'clock, I do not think.
Q. Tuesday, or Wednesday of the second week of the operation of these cars?
A. Yes, sir.

On redirect examination he said:

By Mr. Phillips:

Q. Was there many people on that car?
A. The car was full, but not crowded.
Q. Comfortably filled?
A. Yes, sir.
Q. Do you know how many people the car would seat?
A. No, sir.
Q. Was there twenty-five on the car?
A. Yes, sir, there was.

D. STARCEY, a witness for the Plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Phillips:

Q. You are a resident of Shreveport?
A. Yes, sir.

Q. What is your occupation?
A. Barber.
Q. What part of the city do you reside in?
A. Allendale.
Q. You are a patron then of this one man car, the car line in controversy?
A. Yes, sir.
Q. Did you ride on it many times during the time it was being used?
A. Yes, sir, several times.
Q. To and from your work?
A. Yes, sir.
36 Q. Mr. Stacey, do you know of any accident that has occurred on this one man car, or system during the time it was in service?
A. No serious accident.
Q. Do you know of any?
A. Well, a minor accident happened to me.
Q. There did?
A. Yes, sir.
Q. Was that during the time that a crowd was getting on the car?
A. Getting off and on.
Q. Tell the Court the circumstances, as near as you can?
A. Two weeks ago last Thursday morning I got on the car at the corner of Western Avenue and Anna street and there were three, four or five got on, three or four ahead of me, and one in front of me stopped to get change and I went to get on and the door caught my foot, there was a crowd between me and the motorman.
Q. Got your foot caught?
A. Yes, sir.
Q. That was on account of the crowd between you and the motorman?
A. Yes, sir, the motorman could not see me, did not see me until I hollered.
Q. Was that serious?
A. No, sir, slight. I have not lost a minute work from it.
Q. Have you noticed the position of the motorman, with respect to the cash box, also the hand brake—are you familiar with this, as to whether the motorman can from his position reach over and get the hand brake, in case of emergency?
A. I do not think that he can, without getting up.
Q. He must leave his seat to get over there?
A. Yes, sir.
37 Q. Then in case the air should fail to work and the emergency was created, he must leave his post of duty?
A. Yes sir, I think so.

On cross examination he said:

By Mr. Rendall:

Q. The accident that you speak of, I do not care to go into th details of that—do you know Mr. Sullivan, the General Manager o the Shreveport Railways Company?

A. Yes, sir.

Q. You ride on the Allendale line frequently?

A. Yes, sir, every day.

Q. Were you very much in favor of the in*or*guration of this ne system at first, were you not?

A. No, sir.

Q. Didn't you tell Mr. Sullivan in the barber shop down tow that you appreciated the change, as it enabled you to get back, t and from your work, and it helped the patrons of that line ver much?

A. No, sir, I do not remember stating any such thing.

Q. Do you remember having had any conversation with Mr. Sullivan?

A. No, sir, I do not remember ever having a conversation with him in regard to the car at all.

Q. Still you may have had it?

A. I could not say. I have so many men to deal with, and so many things to talk about, I cannot remember it.

Q. You testified about the effect—that you thought the position of the cash box there would interfere with the motorman in getting over to the hand brake?

A. I do not think that the position of the cash box would interfere.

Q. Then what did you say about that?

A. I said that his position, where he sits on the left hand side of the car, would necessitate his getting up to get to the hand
38 brake, not the cash box, the cash box is not in the way at all.

Q. Have you observed any—have you been present any time, where there was any difficulty in a man getting over there if the occasion to use the hand brake demanded it?

A. I was never on there when he had occasion to use it.

Leon I. Kahn, a witness for the plaintiff being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Phillips:

Q. Mr. Kahn, you are a commissioner of the City of Shreveport?

A. Yes, sir.

Q. In what capacity?

A. Commissioner of Public Utilities.

Q. Street railways come under that head?

A. Yes, sir.

Q. Were you present at a meeting of the Council, in which Mr. Dillon as President of the Shreveport Railways Company came and made application, to try the one man car system?

A. Yes, sir.

Q. Tell the Court what occurred.

A. Capt. Dillon and Mr. Sullivan came, I think first Mr. Sullivan came and made a request of the Council to allow them to try out this car, and after some discussion, without going into it and without knowing much about it, we refused, and they were so instructed by the Commissioners, as we thought that it might impair the service, and we would not grant the request. At another meeting Capt. Dillon and Mr. Sullivan came before the Council and explained to the council that there were some features that they would like for us to see, and they knew that we would adopt them. We did not know anything about the mechanical devices, and they asked permission to put it in operation, that they did not
39 know just how long it would take to do it, as they were uncertain about the material, and they thought possibly until October to do it, and the Commissioners agreed, that they would not interfere with their using it, until the first of October, so that they could try it out and see how it worked, and whether it was acceptable to the people or not, and we expressly told them that if anyone would object to it, and file charges, of course we would have to enforce the law, and we explained the law to them.

Q. You all explained the ordinance requiring two men to be placed on the cars?

A. Yes, sir, and told them that in trying it out they would be trying it out entirely at their own risk. I think that Mr. Sullivan said that they would have to spend four or five thousand dollars, and we told them in spite of that they would be trying it at their own risk, and that any citizen would have a right to come in and file charges, and we would have to arrest them. I think that Mr. Thurber, the Commissioner of Public Safety stated that to them.

By Court:

Q. Were these cars operated after complaint was made.

A. Yes, sir, some citizen made complaint, came before the Council and made complaint, and the Commissioner was instructed to notify Capt. Dillon, that the operation of the cars would have to cease.

Q. Now after that, were they operated?

A. Yes, sir, until we had a protest again from some citizen, who filed suit, this suit that is now up I think, I was absent from the City at the time the charge was filed. I understood that this was to test it out.

JOHN J. KEEL, a witness for the Plaintiff, being first duly sworn, testified as follows:

40 On direct examination he said:

By Mr. Phillips:

Q. Mr. Keel, you have stated in your previous examination that you were a patron of this Allendale car line?

A. Yes, sir.

Q. I will ask you to state the relative position of the motorman and the hand brake on these one man cars—can the motorman from his position reach the hand brake, and use it any time, without leaving his seat?

A. No, sir.

Q. Can he reach it?

A. No, sir.

Q. Do you know the population of the City of Shreveport?

A. Thirty eight or forty thousand.

Q. This particular line goes through a business portion of the City?

A. Yes, sir.

Q. Is the traffic through the business portion of the city any time heavy or light?

A. Well, at certain hours of the day it is heavy, the morning hours between six and eight o'clock, and then between eleven thirty and One thirty.

Q. Well is this, I believe that the car comes down Travis street and then up Texas street?

A. Yes, sir.

Q. Does that force the car to go through the congested portion of the city?

A. Yes, sir, mighty busy street, Texas street.

Q. Mr. Keel, where is your place of business, with regard to the busy part of the city?

A. Right in the center you might say of the busy section.

Q. You have had ample opportunity then to see the condition of the cars, and know how it is?

A. Yes, sir.

41 Q. Mr. Keel, I will ask you, if you know of any specific instance in which the air failed to work recently on these new cars?

A. Yes sir, during the first two weeks of the operation of these cars, one day at about one o'clock, I do not remember the date, I got on the car at either Garden or Myrtle street, and the operator was not able to close his door, and had to operate the car all the way down town with the door open. He did not manage to get his air until he had reached, I think about half way down Travis street. He had some kind of a wrench and hammered around on the apparatus, and about the time that we reached Beauregard street he seemed to get control of his car with the air.

Q. Do you know of any other instance?

A. Yes sir, on Saturday night, about three weeks ago, we had a very heavy loaded car going up Common street into Travis and on reaching the curve at Travis street, the car became unmanageable

for some reason. Of course I could not tell whether it was because he could not operate with the air or what. At any rate the car spun around the curve, and in one particular case, I did not notice several others, but there was a very large lady seated on a front seat, and it threw her entirely out of her seat and she managed to catch the other side of the -isle, and then the car threw her back, and fortunately she was not hurt.

Q. I believe that from Texas street on Common down to Travis street is on a down grade?

A. Yes, sir.

Q. Of course it did not take near as long for that to occur as it takes to tell it?

A. No, sir, all done in a few seconds.

Q. The motorman had no time or opportunity to apply his hand brake?

A. No, sir.

42 On cross-examination he said:

By Mr. Rendall:

Q. Now, as to this instance that you have mentioned on Saturday night, when going from town and approaching the point where the track turns out of Common street into Travis street, or into Western Avenue?

A. No, sir, where it turns out of Common street into Travis street.

Q. Going out?

A. Yes, sir.

Q. At the head of Texas street, or one block from the head of Texas street?

A. Yes, sir.

Q. What did you say took place there, that you observed?

A. Well, there was something happened and that car spun around the curve and the passengers were thrown out of their seats and this lady in particular, I was paying attention to her particularly as she was across the -isle from me and it threw her out of her seat and she grabbed the seat on the other side to keep from falling down full length in the -isle of the car.

Q. Something happened?

A. Yes, sir.

Q. What happened?

A. The car was violently moved around that curve in some way.

Q. Well, what was it?

A. I am unable to say what happened, whether the man released his brakes and turned the car loose or what it was, or whether he attempted to apply the brakes and they would not work, I cannot say.

Q. Then what is the object of your testimony on this point?

A. In showing that the car is not as safe as it might be argued.

Q. That is what you mean by telling the court of this incident?

A. Yes, sir.

43 Q. You do not know whether there was anything the matter with the braking apparatus of the car or not, or whether the trouble was due to the brakes in anyway? Didn't it suggest itself to you that something else might have caused it?

A. If the brakes were properly handled I do not think it could have been anything else to have caused it, that is if in working order and properly handled, it would not have occurred.

Q. Mr. Keel, I do not know whether you are familiar with the operation of street cars; don't it suggest to you a situation that might have been brought about by the motorman running into that curve too rapidly, and that there was nothing the matter with the braking apparatus—are you not leaving out of consideration the element of improper handling of the car by the motorman? Are you not leaving out of consideration the possibility of improper handling of that car, by the man in charge of it?

A. No, I stated, either from improper handling or the brakes were out of order, so that he could not properly handle it.

Q. There is a pretty good grade as you go down Common street from Texas street to Travis street?

A. Yes, sir.

Q. Now you all did not smash down that hill, did not continue to go on down?

A. No, sir.

Q. In going down town to your business, or in going home, where do you usually catch the car?

A. Opposite the Post office, in front of the Post office.

Q. Now in coming down town in the morning, do you ride all the way down town, or do you get off on Travis street?

A. Yes, sir, I get off on Travis street, Travis and Marshall.

Q. And walk on down?

A. Yes, sir.

Q. Now what do you have to say as to the volume of business that car does between the hours of six and eight o'clock in the
44 morning, and say between eleven thirty and one o'clock in the afternoon?

A. Well, at those hours the traffic is heavy, what I mean by heavy is that there are more passengers than can be seated.

Q. Would not the situation be relieved by additional cars?

A. Sure.

On redirect examination he said:

By Mr. Phillips:

Q. Mr. Keel, in regard to the car going into Travis street out of Common street, that you mentioned—the car was to your mind out of control of the motorman, beyond his control?

A. Evidently the car was, or he was a very reckless man.

Q. Do you know the motorman's name?

A. No, sir, I do not.

Q. You had ridden with him many times?

A. Yes, sir.

Q. From your observation of him he appeared to do what was required of him in handling cars carefully at other times?
A. Yes, sir.
Q. And at this particular time the car was out of his control, but you do not know whether it was on account of the air or not?
A. No, sir, I do not know what the trouble was, but evidently it was out of his control, or he would not have gone around the curve the way that he did, and throw the people out of their seats.

Plaintiff rests.

*Defendant's Evidence.*

C. H. BECK, a witness for the defendant, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Rendall:

Q. Where do you live Mr. Beck?
A. St. Louis.
Q. What is your business?
A. Representing the Westinghouse Brake Company?
Q. What is the Westinghouse Brake Company?
A. Manufacturers of air brake equipment.
Q. Does it do a large amount of business throughout the United States, or a small amount?
A. It does a very large amount.
Q. Can you tell me whether or not it is the largest concern of that line in the United States?
A. It is.
Q. Are you an Engineer?
A. I am.
Q. Are you a graduate of any Technical School or college?
A. Yes, sir.
Q. What?
A. The Pennsylvania State College.
Q. How long have you followed your profession?
A. Twelve years.
Q. How long have you been connected with the Westinghouse people?
A. Twelve years.
Q. You have not worked for any other concern?
A. No, sir.
Q. Are you familiar with the street railway systems throughout the United States?
A. Yes, sir.
Q. Your headquarters are at St. Louis?
A. Yes, sir.
Q. What is your connection with your company?
A. The representative of our company empowered to handle ques-

tions of engineering of a Commercial Nature that might arise in a section, within a certain territorial limit.

Q. Mr. Beck, have you examined the cars that the Shreveport Railways Company is using on the Allendale line of the City of Shreveport?

46 A. I have.

Q. When did you examine those cars?

A. Yesterday.

Q. What in the business, what is the name of those cars, what is the general name they are called?

A. We call them Safety cars.

Q. Safety cars?

A. Yes sir.

Q. They are designed to be operated by one man, or more than one man ?

A. By one man.

Q. What have you to say of their equipment, with regard to the safety of the passengers or the public?

A. I would say that the car so equipped, is the safest operating unit that has been in use, the best.

Q. What additional safe guards, -as a car with this equipment, that is as compared with other cars, that is standard car heretofore used, and which is still in general use throughout the United States.

A. It is so arranged that the man operating the car must perform some conscious act at all times, in order to keep the car in motion. If he should fail to perform that act, then it is considered an emergency occasion, at which time the power is automatically cut off, the air brake is applied into the emergency, and is applied to the rail automatically and there are provisions taken for the operation of the doors and steps.

Q. In other words, Mr. Beck, the motorneer, or the man in charge of the car, is required to be performing some conscious act in the discharge of his duty?

A. Yes, sir, he is.

Q. What is the advantage in operation, over such equipped cars that require the conscious performance of some duty, over the old car?

47 A. In the performing of this work, arrangements has been made to require this car operator to be at his proper post and remain there. This is he cannot turn away to any great extent he cannot walk away, such as can be done with the old arrangement cars. He must remain in the position in which he would be expected to be, in the discharge of his duty, and in addition to remaining there, he must perform some conscious act, in order to guarantee the safety of the passengers and equipment.

Q. If not so discharging his duty, what happens, what is the result?

A. A man who does not so discharge his duties may be considered as creating an emergency occasion, because immediately after that time the car should be brought to a stop, and as I have just described, through proper sequence of events the current is cut off, the air

brakes are applied into the emergency, the rail is sanded and provision made for taking care of the doors and steps, that is the emergency occasion is created by the man not attending to his business, and of course that is taken care of.

Q. Mr. Beck, as an expert in your line, what is your opinion as to the relative safety of cars so equipped and cars having the equipment heretofore used, standard cars heretofore used?

A. I would say that a car so equipped, is very much safer than the cars heretofore used, with the ordinary equipment.

Q. Ordinary, though standard?

A. Yes, sir, what has been previously the standing apparatus.

Q. Would you say that a car so equipped, could be stopped *sover* than an old style car?

A. No.

Q. Just *amount* the same amount of time would be required?

A. Any emergency stop for either type of car, presuming that the cars were also of the same *time,* the emergency stop should be the same in both cases.

Q. Mr. Beck, are these cars, these one man type of cars, or
48 safety cars, coming into use throughout the United States?

A. They are, very rapidly.

Q. Will you mention some of the cities where they have been used and are being introduced now?

A. The question of introduced, understanding that it covers orders placed for cars, and cars now being delivered, being built to be delivered, there may be included, Seattle, Washington; Everett, Washington; Willingham, Washington; Sedalia, Missouri; Ft. Worth, Texas; Austin, Texas; Tulsa, Oklahoma; Boston, Massachusetts; Charlotte, North Carolina; Tampa, Florida, and Columbus, Georgia, and the actual record would indicate about forty different companies involved.

Q. Locally, that is to say the state of Louisiana, do you know of any such cars, or where they are seeking to introduce such cars?

A. They have the same type of car, or rather a car operated in the same manner at Monroe, Louisiana.

Q. Do you know how many they propose to use there, or how many they have ordered?

A. I understand that they have purchased three or four, and plan to purchase about four more.

Q. Mr. Beck, I wish that you would examine the picture to which I referred a few minutes ago, and tell the Court whether or not the picture of the front end of the car and platform represents the arrangements that we have on our cars here?

(Showing witness picture referred to.)

A. Yes, sir, it does.

Q. Were you present in Court when Mr. Schermernorn testified a few minutes ago?

A. I was.

Q. In your opinion, is there anything in the arrangement of our

cars the front end of our cars that would interfere with the motorman, in charge of a car, in case the air brake failed to work,
49 from applying the hand brake, any difficulty in turning from one to the other?

A. None whatever.

Q. Mr. Beck, has anyone ever been able to manufacture a braking apparatus that will work absolutely at all times?

A. No.

Q. Within your experience, have you not known of instances where locomotives of steam railways have failed to respond to the application of the air?

A. I have heard it so reported, but the difficulty with that question is that after the incident has happened you have the same apparatus &c. examined and find nothing to cause it not to work, and it would — al-right them of course its condition could be allowed to get such that it would not operate and we would not expect it to operate.

Q. But, as in any other mechanical device, there is an opportunity for them to fail to work at times?

A. Yes sir.

Q. And frequently the cause of the failure cannot be ascertained, is that no- a fact?

A. Yes, sir, exactly.

Q. What have you to say with regard to the safety of the public or convenience in cases of cars equipped like those that you saw on our Allendale line yesterday, and cars equipped with the former standard hand brake?

A. I would say that these cars are very much safer.

Q. Mr. Beck, are you familiar with the publication called the Electrical Railway Journal, Published in New York?

A. I am.

Q. What is that Journal, what is the nature of it?

A. It deals almost entirely with problems arising in the street railway industry, and is considered the most authentic organ of that business.

50 Q. Do you read it?

A. I do.

Q. Do you know Nick Logrand of St. Louis?

A. I do.

Q. Is he connected with manufacturers in St. Louis?

A. He is General Sales Agent of the St. Louis Car Company.

Q. Do you know whether or not cars of this type are in use in Ft. Worth, Texas?

A. I do.

Q. I read you from the Electrical Railway Journal, of date November 25th, 1916, being as follows:

"Demand for the One-man or 'Light Safety' Car.

St. Louis Car Company,

St. Louis, Mo., Nov. 20th, 1916.

To the Editor:

Apropos of the several suggested names for the type of small rolling-stock units known as one-man cars, we have been urging the use of the name 'light safety' cars. That name would assist in their introduction, and it certainly signifies the aims of their designers, and users. In agitating the use of these cars and setting before the industry the benefits to accrue from their use, the Electric Railway Journal is doing a work, that will redound to the benefit of railways and manufacturers alike. We are trying to do our part by building the 'light safety' cars in advance for stock.

We have recently contracted with the city of Monroe, La., for three 'light safety' cars, with all safety control features for double-end operation; with the Wichita Falls (Tex.) Traction Company for five cars with all safety control features for single-end operation, and have received a duplicate order from the Aberdeen (S. D.) Street Railway Company for 'light safety' cars.

The future of the 'light safety' car seems assured. Reports
51 coming from Fort Worth are so glowing that we can discount them and still claim that the 'light safety' type is the best proposition for economy. We have in our files hundreds of letters showing an intense interest in this class of equipment and are actually figuring with some twenty-five roads for orders.

It would appear that the further one goes into this question the more he becomes convinced of its merit. So strongly imbued are we with its future that, as mentioned above, we are building some for stock. I estimate that within the first six months of next year at least 300 of these equipments will be ordered, and in making this estimate feel that I am conservative.

NIC LE GRAND."

Q. Now has your experience been similar or like that of Mr. Le Grand?

A. Yes, sir, very similar.

Q. Do you think that, in making the statement that within the first six months of next year at least 300 of these equipments will be ordered, and in making this estimate feel that I am conservative?

A. Yes, sir.

Q. Is that your experience?

A. Yes, sir.

Q. Do you agree with him, or is your experience similar to his, when he says 'It would appear that the further one goes into this question the more he becomes convinced of its merit.'?

A. Yes, sir, that is my experience.

Q. Now, are you familiar with the proceedings that were taken

out before the Massachusetts Commission, regulating the operation of street Railways?

A. Yes, sir.

Q. Did you appear before the Commissioner in that matter?

A. I appeared at an inspection generally with the represen-
52 tatives of the Commission.

Q. Now in the Electrical Railway Journal of March 31st, 1917, page 616, I will read you as follows:

"Traffic and Transportation.

"Hearing on One-man Cars.

"Two Companies Apply to Massachusetts Commission for Privilege to Use One-man Cars—Burney Design Favored.

"Petitions of the Boston Elevated Railway and the Brockton and Plymouth Street Railway, Plymouth, Mass., for authority to use one-man cars on certain lines were heard by the Massachusetts Public Service Commission at Boston on March 23rd. H. B. Potter, Assistant to the president, appeared for the Boston Elevated Railway. He stated that the Company had ordered one car of the Birney type seating thirty passengers for use on the Maverick Square-North Ferry Line in East Boston. The headway on this line was fifteen minutes, and the traffic was correspondingly light. Mr. Potter said that it appeared that two such one-man cars would give more frequent service and probably at a lower cost than a double-end car seating fifty-two passengers and operated by two men. The speaker declared that better service with no increase in cost was a necessity and the cost of the one-man car was about $35.00 per seat less than the semi-convertible car of the latest type."

Q. Now do you as an expert agree with the statements of Mr. Potter as read to you, in that there were result in a benefit to the traveling public, in Shreveport on the light traffic line known as the Allendale line, and at a reduction of cost to the Shreveport Railways Company?

A. I agree with him.

Q. Did you attend the meeting of the Stone and Webster, Experts held sometime recently at Ft. Worth, Texas?

A. I did.

53 Q. Of whom was that meeting composed.

A. About forty men, Managers, Superintendents, Mechanics and officers of the various Stone and Webster properties.

Q. Would you, or would you not Mr. Beck say that the men composing that meeting, were experts in the street railway business?

A. I would say that they were.

Q. Do you know what was the result of that application that was made by the Boston Elevated Railway and the Brockton & Plymouth

Street Railway Company to the Public Service Commission, of Massachusetts?

A. Both Companies were permitted to secure cars of that type provided they be equipped with the features similar to what Mr. Sullivan has here, following which the Brockton and Plymouth Street Railway Company secured two cars and submitted same to inspection by the Commission.

Q. Do you know of orders that have been placed, or cars now in use in Boston, or can you tell approximately the cars ordered or in use?

A. The Brockton and Plymouth have two cars and the Bay State Company have two cars, both were secured as sample cars, demonstration cars, following the approval of the public Service Commission and the Bay State are now negotiating for fifty such cars.

Q. Do you know of orders placed by the State and Webster people?

A. Stone and Webster have orders placed at this time covering the purchase of one hundred and fifty nine of those cars, and fifty or sixty cars now in service of the same type.

Q. Mr. Beck, are you familiar with the conditions locally, in the South, growing out of the fact that we have to carry both white and negroes in the same cars?

A. I have had some experience with that problem.

Q. As an expert traffic man, or street railway man, familiar with conditions, what is your opinion as to the annoyance, increase in discomfiture or -convenience arising from the use of this type *or* car and the arrangement of these cars over the old type cars?

A. I would say that there would be a decrease in discomfiture or inconvenience.

Q. What would *to* have to say, or what do you say as to the benefits and advantages to the public, by increase in service, if we were able, say to adjust the cars in the service over the present line or increase the number of cars?

A. I would say that it would be particularly to their advantage with a resultant *or* diminution of the mixing of the races, with respect to the mixing of the races yes.

Q. Would not the addition of these cars increase, or decrease the time?

A. It should decrease the time.

Q. What has been your observation, on the heavy traffic lines in St. Louis, as to the movement, so far as time is concerned, with cars that are in charge of one man? What has been your observation as to the operation of the cars by one man, on the heavily congested streets, that is this type car?

A. I would say that cars are now operated on the heavy traffic lines in St. Louis, and they can be just as properly controlled by one person as cars of smaller size in a smaller city and would probably result in a better average schedule, and more satisfactory than is now the case.

Q. And in giving your opinion to that effect, you take into con-

sideration the motorman on such cars would be charged with the duty of giving transfers?

A. Yes, sir.

Q. That is one of his duties?

A. Yes, sir.

Q. Making change and giving transfers to the passengers?

55 A. Yes, sir.

Q. Now, Mr. Beck, in the Electric Railway Journal of May 12th, 1917, on page 902 I will read you "Houston (Tex.) Electric Company is having eighteen single-end pay as you enter one-man safety cars built in St. Louis by the American Car Company. These cars will be equipped with Safety Car Devices Company's air brakes and safety control equipment.' Do you know anything about that whether that is a fact or not?

A. Yes, sir, that is a fact.

Q. On the same page 'Seattle (Wash.) Electric Company, noted in the April 21st issue as being one of the Companies for which Stone and Webster, Boston, Mass., ordered 119 cars from the American Car Company, has specified the following details for the twenty five pay as you enter one-man safety cars.

'Specifications omitted.'

Q. Is that a fact?

A. Yes, sir, that is a fact.

In connection with the illustration defendant offers the article appearing in the Electric Railway Journal of June 9th, 1917, on pages 1055 and 1056, same being as follows:

'One-man Cars for Tacoma.

Rebuilt Cars of the Single-track Type Have Become Popular with Employees and Public.

By K. C. Schluss, Superintendent of Power and Equipment Tacoma Railway and Power Company, Tacoma, Wash.

The Tacoma Railway and Power Company has recently rebuilt six of its old-style, single truck, closed cars to make them suitable for one man operation, the cost of reconstruction, inclusive of air brakes and prepayment facilities for double-end service, approximating

$1,300 per car. By operating this equipment at one-half the

56 former headway a very great increase in traffic—approaching 100 per cent, has been effected, and the public is very well satisfied.

Originally the cars were of the convex-concave-side type with monitor roofs and drop platforms. They were equipped with Brill 21-E trucks and GE 58 motors and were operated with hand brakes. The rebuilding included a minimum amount of alteration to the bodies and platforms, together with the addition of Westinghouse

semi-automatic air brakes, pneumatically controlled doors and steps, air sanders which are operated automatically in emergency, dead man's circuit breaker control and other safety features. This type of equipment has been described in detail in the Electric Railway Journal of September 2, 1916, under the title "Equipment of the Safety Car."

The General dimensions and weights are given in the table in the next column.

The weight of the air equipment complete, including safety devices, piping, hangers, etc., is estimated to be 1350 lb. This is slightly higher than usual for this type of car, due to the use of a larger compressor than is generally required to operate the brakes and other apparatus. The Company had on hand a number of Christensen AA 1 compressors and they were utilized on these cars. In order to conserve space a sheet metal housing was designed to replace the wooden box originally furnished with the compressors.

The principal changes made to the body proper include the removal of the bulk heads and the rearrangement of seats. The bulkheads are cut off at the height of the inside window sills, the lower portions being cased over and a 1 in. pipe stanchion extended from each section to the end plate which is arched to conform to the contour of the roof. The opening between the stanchions is 35 in. The preference of the public for cross-seats influenced the adoption of this type of seating plan so far as possible, but since the width between posts at the floor line is only 6 ft. 4 in., it was necessary to retain the longitudinal seat along one side of the car. All seats are upholstered with Pantasote.

57

The platforms originally had stationary steps and manually operated doors on both sides. These were removed, the left side of each platform being closed and a stationary window installed which corresponds in height and design to the vestibule windows. On the right side is installed a two-leaf folding door which swings out and against the body corner post. The clear opening of the door is 32 in. The folding step is supported by hinged brackets and operated automatically with the door. The doors and steps are operated entirely by air, excepting that with an emergency application of the brakes the door on the rear platform may be opened by hand, after releasing an ordinary door flush bolt which is located near the center of the door in plain view of anyone attempting to leave the car. The steps are lighted by a lamp above each door which is switched on and off automatically as the door opens or closes. This is accomplished by means of a contact connected to the door operating rod.

Miscellaneous equipment not previously mentioned consists of Motorman's revolving stool, push buttons and buzzers for signaling motorman, Johnson fare boxes, International registers "Golden Glow" headlights, rotary gongs and Earll Trolley retrievers. Although the company's standard color for city cars is dark green, these cars are being painted maroon and cream to give them a distinctive appearance. One of the accompanying illustrations shows the arrangements of controller, brake, valve, hand brakes, fare box and motorman's chair on the front platform, from which it will be

seen that elaborate provisions for the operator's convenience have been provided. This has *e*vtually resulted in making the one man car runs popular among the platform men, and in many cases they are claimed as preferred runs by senior men.

| | | |
|---|---|---|
| 58 | Length over all | 31 ft. 0 in. |
| | Length of body | 20 ft. 0 in. |
| | Width at sills | 7 ft. 1 in. |
| | Width over all | 7 ft. 10 in. |
| | Height—rail to step | 16 in. |
| | Height—step to platform | 12½ in. |
| | Height—platform to floor line | 10 in. |
| | Height—rail to floor line | 38½ in. |
| | Truck wheelbase | 7 ft. 6 in. |
| | Seating capacity | 29 |
| | Light weight of car complete | 24,200 lb. |

Counsel for defendant also offers the article in the Electric Railway Journal of its issue of April 21st, 1917, on pages 735 & 736, being as follows:

"Results of One-man Car Operation.

One-man Car Operation on Fifty Railways Shows Reduction in Accidents and Maintenance of Schedule Speed.

The result of one-man car operation on fifty electric railways in the United States and Canada have been tabulated by the J. G. Brill Company and since this number represents about forty per cent of the companies which are operating one-man cars, it gives an excellent chance to review the results of operation of these cars.

Of the fifty companies represented in the tabulation the Hot Springs Street Railway reported the earliest operation *one* one-man cars, which was in 1895. In all except eight of the companies the one man cars installed replaced two-man cars. The general operating results are reported as satisfactory, practically without exception, while public opinion has been favorable with a few exceptions. One case of adverse public opinion was reported and four cases where adverse criticism was encountered only at first. Political and
59 labor troubles have been slight. In regard to the saving resulting from one-man operation all but one company reported a considerable saving, some gave fifty per cent in labor cost and one railway gave a saving of from $4,000 to $5,000 a year on five cars. On twelve railways the receipts increased, others reported receipts from 10 cents to 18 cents per car mile. In three of our twelve cases of jitney competition it was reported the one-man car had been effective in overcoming this competition.

The accident report was strongly in favor of the one-man car. Platform accidents were either reduced or there were none at all; other accidents were rare and their number was reduced. No new kinds of accidents were reported. It was practically the unanimous

opinion that the individual responsibility of the motorman tended to reduce accidents, and that the absence of the conductor as a witness in case of accident was a trivial matter.

Neither the schedule speed nor the headway seemed to have been materially changed by the new operation. However, six railways reported lower schedule speeds, and a like number were giving more frequent service.

In regard to the car details, all of the companies used the front entrance and exit construction. Vestibule doors were used in all but three cases, and folding steps were used in the majority of cases. These two facts undoubtedly account for the reduction in the number of platform accidents. A mirror was provided to enable the motorman to watch the interior of the car in a few instances, and in three cases the use of the dead-man handle was reported, whereas air brakes were used on sixteen roads of the fifty reported. The majority of the roads operated cars of the double end type.

The pay-as-you-enter system of fare collection was common to all lines except one which reported a pay-as-you-leave system.
60 Fare boxes were reported on all but thirteen roads and on four roads change was put up in packages. On one half the roads the motorman was allowed to start the car before collecting the fares.

The question of the motorman seemed to raise no difficulties in the case of one-man car operation, since very few of the men prefer the two-man cars or object to collecting the fares. In many cases they get a small increase in pay and labor troubles were reported only in three cases. Some companies thought it was easier to maintain discipline and to select the good men when using the one-man cars, but in most cases these two factors were not changed.

The practice of using two-man cars in place of one-man cars during rush hours had not been extensively adopted among the roads reporting, but this was done in a few instances and a few railways used one-man cars in residential sections and two-men cars in business districts during the rush hours. The use of fare collectors at busy points was reported only in one instance. The following table shows the classes of service for which fifty railways use one-man cars. It indicates that the one-man car is not at all limited to branch line service:

| Class of service. | Number of railways. |
|---|---|
| All lines | 21 |
| Main lines only | 10 |
| Branch lines only | 4 |
| Shuttle service only | 4 |
| Main and branch lines | 7 |
| Main and Shuttle service | 1 |
| Branch line and shuttle service | 1 |
| Main line, shuttle service and owl car operation | 1 |
| Not classified | 1 |
| | 50 |

61 Regarding railroad crossings, it appears that a few are safeguarded with automatic safety devices, and in some instances a full stop only is required before proceeding across the railroad tracks, but in most cases a flagman is used or the motorman flags these two practices being about equally common. No one reported trouble due to race prejudices, the races being separated on about half the railways reported.

While the answers to the various questions are not conclusive in most cases, they yet show the extent to which the problem is working itself out, and indicate that the railways consider one-man car operation a success as far as it has been tried. Furthermore they are trying to extend the operation where the opportunity affords itself."

Counsel also offers in Evidence article in same magazine of same date on page 766 being as follows:

"Stone & Webster Management Association, Boston, Mass., has ordered from the American Car Company 119 one-man cars with safety car devices equipment, Westinghouse air brakes and the following specialties: Faraday high-voltage signal system, Hunter signs, Golden Glow headlights—keystone rotary gongs, air sanders and trolley catchers. This includes the order for twenty-four cars noted in the March 31 issue."

Counsel for defendant offers in evidence article appearing in the Electric Railway Journal of date May 19th, 1917 on page 943, being as follows: "Tampa (Fla.) Electric Company is having fifteen double end pay-as-you-enter one-man safety cars built for it in the shops of the American Car Company, St. Louis, Mo."

Counsel for Defendant offers article appearing in the Electric Railway Journal of date May 14th, 1917, on page 719 as follows:

62 "Car Building Plants Busy.

Orders for 1917 Will Probably Exceed Those for 1916—Delivery Dated Difficult to Fix.

Based upon the opinions of several car builders, and also upon the number and character of rolling stock items published weekly in this department of the Electric Railway Journal, the statement can assuredly be made that the car orders for the first half of 1917, will considerably exceed those for either half of 1916. The orders from the Eastern roads have been made up largely of city cars for service on heavily-traveled lines, while the Western properties have ordered many lightweight, safety (one-man) cars. One car builder recently made the statement that on account of the orders for lightweight cars already on the books, and for a number of other orders which are expected to be placed he was confident that his Company's business for 1917 would exceed that of any year since 1912."

Counsel for defendant also offered in evidence the article appearing in the Electric Railway Journal of date April 7th, 1917, on page 665, being as follows:

One-man Cars Authorized.

Trial of Cars of This Type Authorized for Two Companies in Massachusetts.

Acting on petitions of the Boston Elevated Railway and the Brockton & Plymouth Street Railway, Plymouth, Mass., the Public service Commission of Massachusetts has issued an order approving the trial use of one-man cars on certain routes as specified in the account of a hearing on this subject published in the Electric Railway Journal for March 31st, page 616. Permission to operate one-man cars has been refused in the past by the commission and its predecessor, the Massachusetts Railroad Commission. In 1903 and
1915, it was proposed to employ for one-man operation a
63 car very similar to the ordinary car in charge of two men, but to use only the front door and some form of prepayment device. In the present instance, both companies desire to use a one-man car provided with the most improved safety devices.

The decision points out that since such cars permit more economical operation, they are clearly a public benefit and ultimately contribute to the welfare of the employees, although opposition to the cars was raised by the employees' union at the hearing. The commission reserved its opinion on the fitness of cars of this type to give adequate service on the lines in question."

Counsel for defendant also offers in evidence the article appearing in the Electric Railway Journal of date July 14th, 1917, being as follows:

"The Fashions are Changing."

In reviewing the orders placed so far this year, there is noted a substantial increase in the number of light safety one-man cars. While not a great many cars have been ordered for city properties in the Central and Western states yet it is apparent that lightness and safety have at last been fully recognized by small as well as large roads. The Stone and Webster properties have been the largest buyers so far of the small, light, safety units. The single order for 159 of these cars, which will be of the Birney standardized design, will be distributed among properties located in Atlantic, Pacific and Gulf States. The Illinois Traction System also ordered about fifty of these 'little fellows' of its Bosenbury type, and practically all of the properties in the Mississippi Valley which ordered cars have adopted some type of light, safety one man unit."

Counsel for defendant also offers in evidence the articles
64 appearing in the Electric Traction in its issue of July 1917 on page 466, being as follows:

"One-man Cars in Sioux City

"For a number of years the Sioux City Service Company of Sioux City, Iowa has been operating a number of one-man cars with very satisfactory results. Contrary to general expectations Mr. E. L. Kirk, general manager of the company, states that he has not found the one man car to slow up schedules. Frequently, with two-men operation, the crew at the end of a run starts in to visit and before they realize it, they are several minutes late. Then they attempt to make up time or when they reach the next point they are behind schedule. With one man cars, this trouble is avoided. This probably offsets any time, if any, lost through boarding and alighting with one-man cars."

On cross examination he said:

By Mr. Phillips:

Q. Mr. Beck, you mentioned Monroe, Louisiana as using these cars, is it not a fact that they have postponed the use of these cars?

A. They are using them, but controlled by two persons, that is two persons on the cars.

Q. In these cities that you mentioned the names of, in your direct examination, is this type of car in use in each of those cities or proposed to use?

A. Either in use or else cars or orders have been placed covering the equipment. Some cities have them in use and others are having the equipment manufactured.

Q. How long has it been since these cars were first introduced to the public?

A. Four years.

Q. Have they been very extensively used until recently?

A. Only within the last year.

65 Q. You stated I think just now, in your opinion that the one-man safety car was in case of an accident, or emergency, when an emergency was created that they were safer than the present style car, that is the car in general use now—would you consider that the motorman sitting out of reach of the hand brake, if the air should fail to work, when he was in a position that he could not reach the hand brake, that that would be safer than the present style, where the motorman stands there with his hand on the brake?

A. Not, if he cannot reach the hand brake.

Q. In case of an accident, under this one-man system, where it might be necessary for the passengers to get off of the car, go out the back door, and the air should fail to work, and he was in a position where he could not reach the hand brake, how would the door be opened?

A. That question is pretty hard to answer—the air fails to work.

Q. The air does sometimes fail to work?

A. You mean in an emergency occasion, of course in that case it would be taken care of, and it would be possible to force the door.

Q. What I was getting at Mr. Beck, suppose that in a certain case the air would not work, and suppose that the car was jammed, would there not be danger of someone being thrown out and getting hurt?

A. If the doors opened outward no?

Q. Why not?

A. Because in a folding door one falls against it there would be a tendency to be caught.

Q. Now Mr. Beck are you familiar with the traffic on the Allendale line?

A. I have been over the line.

Q. As a matter of fact you are not familiar with it?

66 A. No, sir.

Q. Now with that arrangement, and there are a lot of white passengers on the car, and a lot of negro passengers get on. are they not bound to come in contact with the white passengers?

A. No more than with the other arrangement.

Q. You would use a curtain screen to keep them from rubbing up together?

A. No, sir, have the seats in the rear, say half a dozen, and white people getting on the front end of the car would not see the negroes on the rear at least would not come in contact with them. Of course in going in and out they would pass down the -isle.

Q. Say that there were ladies already on the car, would it not be discomfortable in having them passing?

A. I do not see it would be any more than at the present time.

V. W. BERRY, a witness for the Defendant, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Rendall:

Q. Mr. Berry, where do you live?
A. At Ft. Worth, Texas.
Q. What is your business?
A. General Superintendent of the North Texas Traction Company.
Q. How long have you held that position?
A. Four years in November.
Q. How long have you been in the traction business?
A. Nineteen years.
Q. How old are you?
A. Thirty nine.
Q. You have been in that business ever since you have been able to work?

67 A. Yes, sir.

Q. With what Company?
A. North Texas Traction Company.
Q. Is that in any way allied with the Stone and Webster Company?
A. Yes, sir, one of their companies.

Q. What is Stone and Webster, what is their field of operation?

A. They are General Managers of various railway lines and properties over the United States and some in other countries, and also do a large engineering and construction business.

Q. Can you tell us whether or not it is one of the largest concerns of its kind in the United States?

A. I think the largest.

Q. Now are you familiar with the business, the traffic business in its various lines, and especially the street railway business?

A. I think that I am familiar with it.

Q. Do you know the type of car that the Shreveport Railways Company has now in operation on its Allendale Line in the City of Shreveport?

A. Yes, sir.

Q. What do you call that type of car, what is it known by in your business?

A. In Ft. Worth, it is known as the front entrance safety car.

Q. Is it frequently spoken of as the one man car?

A. Yes, sir.

Q. Where does it get that name and what does that name really signify?

A. Because it is operated with one man, instead of two.

Q. It is operated with one man who performs the duty of operating the car, of making the collection, giving transfers and opening the car for exit and entrance of passengers?

A. Yes, sir.

Q. In other words he performs the duties of motorman and conductor?

68 A. Yes, sir.

Q. Now under the class of cars that are still yet in general use, what are the functions of the conductor, what is his business?

A. He takes up the fares, issues transfers and makes change.

Q. Has nothing to do with the control of the car?

A. No, sir, nothing whatever.

Q. Have you any of the cars of the type that we have described as safety car, or one man car in Ft. Worth, on your lines?

A. Yes, sir.

Q. How many?

A. Ten.

Q. How long have you had them?

A. We have had them in service since November 2nd, 1916.

Q. Are they equipped similar, and are they operated in the way that the Shreveport Railway propose to operate these cars here?

A. Yes, sir, the same.

Q. What has been the result of your observation of those cars in Ft. Worth, Texas?

A. They have proven very satisfactory.

Q. What has been your observation as to the use of the car for the safety of the citizens, both from the standpoint of the citizens and the public?

A. I presume in Ft. Worth that we have the same class public, as we have in Shreveport.

Q. You have whites and negroes?
A. Yes, sir.
Q. You handle them practically the same way that we have to handle them here?
A. Yes, sir.
Q. Under the laws of Texas I presume you are required to assign race space in the car?
A. Yes, sir.
69 Q. Now did you meet with any opposition in Ft. Worth when you proposed to introduce it?
A. We had no direct opposition, but about ten days before the car was put on we announced in the newspapers that this type of car was to be put on a certain line to replace the large double truck cars, which we operated on that line, and that by the operation of the one man car that the service would be materially improved. We got information that there would be considerable objection to it, but the cars were put on ten days later and met with great favor from the public immediately and we *had* had no complaints whatever.
Q. Can you tell whether the popularity of these cars has increased?
A. Yes, sir, we have petitions from other lines requesting the same service.
Q. You operate them with one man?
A. Yes, sir, a heavy residence line.
Q. You operate and control more than one line?
A. Yes, sir, twelve or thirteen lines.
Q. Will you tell us whether or not the patrons of that line on which you have introduced these cars have made any objection, or whether they are in favor of it?
A. We have had no written complaint or objections verbally coming to the office in regard to the use of the car, that I know of, except a casual complaint, that they thought there might be trouble on account of the separate races when we first started the cars, and then the general complaint we heard ten days before we introduced the car.
Q. That was in anticipation of putting the cars on?
A. Yes, sir.
Q. Since then has there been any objection?
A. No, sir.
70 Q. I understand you to say that the patrons of other lines have asked you to install the same kind of cars on their lines?
A. Yes, sir, have petitioned us.
Q. Petitioned you to install the same kind of cars on their lines?
A. Yes, sir.
Q. What is the result in point of service, and the better of the service on this line?
A. This particular line ran on a fifteen minute head, with the double truck cars, and when we introduced these cars, a ten minute service all day, and a five minute service during the rush hours. We also speeded up the cars from about six or eight to ten miles an hour, a marked increase of fifty per cent, and we increased the speed to

about ten, about ten per cent and that seems to be the thing that the people want, service.

Q. Has that increase, is that a detriment to the service in any way, has it lessened the safety of the travelling public?

A. No, sir, none whatever that I can see.

Q. As an expert what have you to say with regard to the safety of the public or your passengers resulting from the use of those cars, as compared to the use of the cars heretofore used and considered as standard apparatus, say with two men?

A. My opinion is that they are a great deal safer. The record of our accidents on this particular line over eight months in operation bears that out, both the public and our passengers' safety, from the standpoint of collisions and the so-called step accidents.

Q. Now will you tell the Court, describe to the Court how those cars are equipped, how they work, what are the safety devices?

A. In the first place the car is equipped with the light unit air brakes, and I will say that it is not customary to equip single
71 truck cars with air brakes, and the air is applied by a mechanical device, so that it is necessary for the motorman to keep his hand on the controller handle all the time, with his power on and in case he removes his hand from the controller the air brakes are set and the power is cut off. The brakes are put on in the emergency and the doors are unlocked, both front and rear. The brakes are automatically applied into the emergency the power is cut off and the doors are automatically unlocked and sand applied to the track. Those are the principal safety features of the car.

Q. As explained by Mr. Beck, the motorman of the car must be constantly in the performance of some duty, he must be performing some conscious act?

A. Yes, sir.

Q. And if he fails, grows inattentive, the apparatus automatically takes care of that situation?

A. Yes, sir, the emergency is applied.

Q. There was nothing in the arrangement of the cars of the Shreveport Railway Company, as you inspected them yesterday, that suggested that there would be any difficulty in the motorman reaching his hand brake?

A. No, sir, no difficulty that I could see.

Q. Was the cash box, or the box in which the fares are deposited, improperly placed on the car?

A. No, sir.

Q. You stated a moment ago, that it was not customary or usual to equip cars, that is these size cars with the air braking apparatus. I take it that it has been the standard heretofore to have cars of that size equipped with hand brakes?

A. Yes, sir.

Q. Which, in your opinion, is the safest equipment, the hand brake or the air brake?

A. The air brakes.

72 Q. There is no question in the world about that?

A. No, sir.

Q. One of the witnesses related an instance, or a case where he claimed there was a failure of the air brakes to work? I asked Mr. Beck the question, if anyone had been able to invent or make a brake that would work under all conditions and under all circumstances, I do not suppose that anyone has been able to do that?

A. No, sir, of course that is liable to most any piece of mechanism.

Q. It is very frequently a very difficult matter to ascertain the cause of their failure to work?

A. Yes, sir.

Q. But such failures are rare, in your experience?

A. Yes, sir, very rare.

Q. In your opinion there is no question but that a car equipped with the air brakes, such as you found on these cars, is much safer than a car equipped with the hand brakes?

A. Yes, sir, very much safer.

Q. There is more room for the hand brake to operate properly than the air brakes?

A. Yes, sir, hand brakes very frequently fail.

Q. Can you give an estimate of the ration, of one as against the other?

A. I do not know that I can. I have never seen half a dozen cases in my experience of the air brakes failing to work, while on the other hand I have seen a number of instances where the hand brakes failed to work.

Q. Now, in the operation of your cars in Ft. Worth, over about eight months, what have you to say on the question of the comfort or discomfort, or convenience or inconvenience resulting from the use of these cars?

A. Our patrons on that line state emphatically that it adds greatly to the service and comfort. Personally I am sure that it does.

73 Q. How do you take and discharge passengers?

A. By the front end.

Q. Where are the colored people seated?

A. In the back end.

Q. I believe that you have stated that there had been a large decrease in the matter of accidents or injuries to passengers?

A. Yes, sir, a certain class of accidents eliminated entirely.

Q. What are they?

A. Step accidents, in the last eight months since they have been in operation they had been operated without a single step accident, or a person falling, while the six months previous to that we had nineteen.

Q. Since then, within eight months none?

A. No, sir.

Q. Can you give a reason for that?

A. My opinion is that it is because the responsibility is not between two men.

Q. Not divided?

A. Yes sir, not divided.

Q. It does not require the co-ordination of the two minds?

A. No, sir, the man knows absolutely when his passengers are either aboard or off.

Q. In other words it eliminates the getting together of the two minds?

A. Yes, sir.

Q. Did you attend a meeting of the representative men of the Stone and Webster Association held at Ft. Worth sometime recently?

A. I did.

Q. Who composed that meeting?

A. There was about forty or forty one representative men, managers, Superintendents and Mechanics of the various Stone
74 and Webster properties in the United States gathered there.

Q. Were you personally acquainted with a number of them?

A. Yes, sir, all of them.

Q. Were they, or were they not technically trained men?

A. Part were technically trained and others were not.

Q. But men of experience?

A. Yes, sir, long experience.

Q. In operating street railways?

A. Yes, sir.

Q. You took part in that discussion?

A. I did.

Q. As a result of their conference, or did their deliberations lead your company to install cars of this type on various lines?

A. Some of the Companies' representatives had already decided to do so previous to the meeting, others were undecided, and the primary object of the meeting was to discuss the proposition in general, and standardize it, and every feature of the car was standardized at that meeting.

Q. Are you familiar with the use of this type of car in other parts of the country, or by other firms or companies than Stone and Webster?

A. None but one. I have ridden on cars operated by one man in a number of cities, Corpus Christi is one outside Company that I am familiar with, and a number of companies operated by Stone and Webster.

Q. What do you say as to the growing popularity with the people throughout the country?

A. It has really been remarkable, ever since we put on our ten cars.

Q. I will ask you to look at this picture, which has been referred to and tell the court whether or not that is a fair picture or representation of the arrangement of the front end of the Shreveport Railway Company's cars?

75 A. It is substantially the same.

Q. Have you found that your cars have been delayed by reason of the fact that the motorman or man in charge of the car has been obliged to collect fares and give transfers?

A. No, sir, it has not. As I stated we are making an average schedule of ten miles an hour and with the old equipment it was 8.6 miles per hour.

Q. Summing up your testimony, I understand it to be, the effect that it is your opinion, as an expert that this type of car is the best development in the way of a street car and equipment now on the market, having in mind your obligation with regard to the safety of your passengers and their convenience, and also with regard to the safety of the public using the streets?

A. Yes, sir, I think that it is the best today.

Q. Your opinion is based on your study of the equipment itself and upon your study of the operation of the cars on your line during a period of more than eight months?

A. Yes, sir.

Q. And as far as you can learn that is the situation throughout the United States?

A. Yes, sir.

On cross-examination he said:

By Mr. Phillips:

Q. Have you any interest in this patent?

A. No, sir, I have not.

Q. In the lines where you have installed these cars you have increased the speed from 8.6 miles per hour to ten miles per hour?

A. Yes, sir.

Q. At the same time you say that it is safer from collisions—is it not a fact that two trains running together, running in opposite directions that there is more danger of collisions from fast trains than slow trains?

76 A. The maximum speed of these cars is not as high as the old ones we operated.

Q. Yet you have increased the schedule?

A. Yes, sir. The old cars the maximum was twenty eight miles and these are twenty four or twenty five.

Q. Are those cars operated in Ft. Worth or in the suburbs?

A. The City exclusively.

Q. The City of Ft. Worth does not allow the cars to be run at the rate of twenty five miles an hour?

A. We do not run them at twenty five miles an hour.

Q. What is the law there, the maximum speed in the city?

A. I think in the residence section twenty two miles per hour.

Q. I will ask you this Mr. Berry, is it not a fact that the air brake equipment on the two men car is just as good as the air brake equipment on these cars?

A. That part, the air brake equipment on the safety cars and the others is just the same, that is this particular equipment, there may be some later improvements.

Q. Now you mean that if the motorman removes his hand from the controller that the car goes into the emergency?

A. Yes, sir.

Q. Does that then, automatically release the door, to where it can be pushed open?

A. Yes, sir.

Q. In case of a sudden stopping from this emergency, with a crowd on the platform, if someone fell against it there would be nothing to keep them from falling out?

A. Well the doors fold out. We have had as high as eighty people on cars that seat twenty nine, and I have personally seen the brakes put on in the emergency.

Q. Nothing like that has happened on your lines?

A. No, sir, and I cannot see where anyone could fall out, I have tried to fall out myself.

Q. You mentioned just now that no one ever made a brake
77 that never failed, are you not in putting on the one man arrangement discarding the hand brake and relying on the air brakes entirely?

A. We keep the hand brake on, but we do not rely on it, the air brake is what we rely on as the emergency brake. In case the air does not work we do not rely on the hand brake.

Q. The hand brake is there to use?

A. Yes, sir, we rely on reversing the car. I never saw a motorman in case the air failed to reach for the hand brake, he throws the car in the reverse.

Q. What position do you occupy?

A. General Superintendent.

Q. You are familiar with the duties of the conductor and motorman?

A. Yes, sir.

Q. Under the two man arrangement, where is the position for the conductor, on the car, when there are two men, on the rear end is it not?

A. Yes, sir.

Q. The motorman operates the car by signals?

A. Yes, sir, starts and stops.

Q. One bell stop and two bells to start?

A. Yes, sir.

Q. Then when a car comes to a stop and the motorman keeps his car standing still until the proper signal is given by the conductor to go ahead, under the old arrangement?

A. Yes, sir.

Q. Don't the duties of the conductor require him to watch his stops and see that all passengers are safely on or safely alighted before giving the signal?

A. Supposed to do so.

Q. Do you operate a front exit on your cars, the ordinary type?

A. We do and probably ten per cent get off at the front end.

Q. It is the duty of the motorman where you have both the front and rear exits, to watch and see that everyone has alighted
78 safely before he starts, even though he gets a bell from the conductor?

A. Yes, sir.

Q. Why is it more safer then, where the motorman must be absolutely sure, under the old arrangement, that the passengers have

gotten on or off the car, before he goes ahead, even though he gets a bell from the conductor?

A. In the new type *or* cars the human element is practically taken out. The man giving the bell before the passengers gets on the car and the motorman starting immediately on getting the bell, while on the new type of cars the cars don't start until the doors are closed. After the brakes are released the doors close automatically as long as the brakes are on the doors are open and you cannot start the car.

Q. But the human element enters into the motorman the same as the conductor?

A. Yes, sir.

Q. In other words, that depends entirely upon the men?

A. Well, any man running a street car, if he gets two bells he will start, and if someone is alighting he may start, that has been my experience that he will start when he gets the two bells.

Q. Now what proportion of your car do you serve for the colored race, under the law requiring the segregation of the races?

A. Not less than room for your passengers, more if necessary.

Q. How much more?

A. We have a seal*l*ing method, so that we can move the sign clear to the front end, and there are times that we reserve nearly all and other times only four seats.

Q. Now whose duty is it to regulate the amount of space for the races?

A. The operators.

Q. Then in case a crowd should get on the motorman must necessarily leave his position and go there and remove the screen?

79 A. Yes, sir, that is necessary for the operator of the car to remove it or some of the passengers to do it, but in case of people seated in either one compartment or the other, under our law he does not have the right to make anyone get up. If he makes a mistake and places his screen in the wrong position, and people get in and are seated he has no right to force them to move. There are times that we handle fifteen per cent negroes and other times when we handle ninety per cent negroes.

Q. It requires then, that sometimes the motorman should remove the screen, or move it?

A. No, sir, he moves it and as he goes through from one end to the other the line is operated through the center of the City and he reverses the car and goes to the other end, takes his fare box and moves the screen up at the same time.

Q. What, if occasion arises in the middle of the trip, who would move it at that time?

A. He could, and it would not take any more time than if we had two men, we have a rule that the conductor shall not go on the inside of the car to remove the screen unless the car is standing still.

By Court:

Q. You say that you all have installed these cars recently, within the last seven or eight months?

A. Yes, sir, November 1st.

Q. Did you have a City ordinance on the question, requiring two men to the car, in Ft. Worth at the time?

A. No, sir.

Q. Had no such ordinance?

A. No, sir, I would not want to say that positively. I heard there was an old ordinance, but I would not say positively.

Q. You do not know whether there is or not?

A. No sir, we took it up with the City Commissioner and they agreed for us to try it out.

80 Q. You consulted the authorities?

A. Yes, sir, and they permitted us to equip these cars on this line, a section of heavy residence line, the heaviest in the city.

Q. The cars that you have there, the one man cars are convertible and the same size?

A. Yes, sir, that is the ten cars were new.

Q. The ten cars were new?

—. ——.

On redirect examination he said:

By Mr. Rendall:

Q. What is the necessity of having two men on cars equipped as these cars, or on such cars as the defendant the Shreveport Railway Company have on this line?

A. I do not see any necessity at all.

Q. What service can the second man on such a car render, or what can he contribute in any way to the safety or comfort or convenience of the passengers?

A. I cannot see that he could in any way contribute to their safety or convenience.

Q. Now, as I understand, you say in your opinion, there was added safety with one man handling the car as there was no division of responsibility, such as you frequently found when you had two men on a car. In other words, that the matter was wholly within one man's mind, and did not depend upon the proper working together or harmonizing of the two, is that correct?

A. Yes, sir.

Q. In other words, this question of divided responsibility did not enter into it?

A. Yes, sir, that is a fact.

W. F. DILLON, a witness for the defendant, being first duly
81 sworn, testified as follows:

On direct examination he said:

By Mr. Rendall:

*A*. Capt., you are connected with the Shreveport Railways Company?

A. Yes, sir.

Q. As its President?

A. Yes, sir.

Q. I will ask you, if at any time recently you or your company through you, took up with the Commission Council of Shreveport, the question of operating these one man cars on your Allendale Car line?

A. Yes, sir.

Q. Just tell us substantially what was done at that conference or meeting?

A. Mr. Sullivan and myself went before the Commission and told them what we contemplated, prior to having any of these cars equipped whatever, and explained to them what we thought the advantages were and they agreed to let us try it out and give us until the first of October to do so.

Q. As a trial?

A. Yes, sir.

Q. Have you all spent any money in equipping cars to make that trial?

A. We have.

Q. I believe that the Commission Council said that so far as it was concerned it would give that permission?

A. Yes, sir, I judged that was it.

Q. But I take it that they said if complaint was made by others they would have to act?

A. I do not know that that came up. I do not know that we anticipated any complaint.

Q. In order to be fair, you knew that the Ordinance had not been repealed?

A. Yes, sir, immunity was not granted at all.

52 By Court:

Q. Did you all go before the whole council?

A. I think that the entire Commission was there.

Counsel for defendant offers in evidence the cut or picture heretofore referred to.

Filed in evidence and marked Exhibit No. 1.

JOHN MURRAY, a witness for the Defendants, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Rendall:

Q. Mr. Murray, you are a resident of the Allendale neighborhood of the City of Shreveport?

A. Yes, sir.

Q. You are a patron of the Allendale line of the Shreveport Railways Company?

A. Yes, sir.

Q. Your residence is within half a block of the line, is it not?

A. About a block.

Q. You have occasion to use the line?
A. Yes, sir.
Q. You used the line before the Company installed these cars, that are now known as the one man type of cars?
A. Yes, sir.
Q. You have ridden on them frequently since they have been put in charge of one man?
A. Yes, sir.
Q. Mr. Murray, do you notice any betterment, or improvement in the service of the Company, given the patrons that use the car from that section of the city?
A. Well, I think that the new arrangement much preferrable to the old arrangement, on account of the schedule, not over
83 eight or ten minutes and the cars are never crowded.
Q. You find then, when you use the line that the cars are less crowded than when the cars ran under the old system?
A. Yes, sir, quicker service.
Q. Have you been subjected to any discomfiture or inconvenience since the cars have been changed to this type?
A. None whatever.
Q. I take it then that the proposed plan or present plan of operation is more satisfactory to you than the old arrangement?
A. Yes, sir, lots more.

On cross-examination he said:

By Mr. Phillips:

Q. Mr. Murray, how often do you say that you ride — these cars?
A. Well sometimes twice a day and sometimes three or four times. I do not know exactly how often.
Q. In other words you are a casual rider on the cars instead of regular?
A. No, sir, regularly once a day and oftener.
Q. You base your preference for the cars then on the short time between the cars?
A. Partly.
Q. Instead of any other reason?
A. No, sir, another reason is that there is not near so much crowding, with the eight minute schedule people can wait, rather than go on a crowded car.

Evidence closed.

I hereby certify that the above and foregoing is a true and correct translation of my Stenographic notes taken on the trial of the above cause, after same was reopened.

(Signed) R. B. COOK,
*Stenographer.*

84 *Bill of Exceptions.*

City Court, Fourth Ward, City of Shreveport, Caddo Parish, Louisiana.

No. 328.

CITY OF SHREVEPORT

vs.

W. A. SULLIVAN.

Be it remembered in the above numbered and entitled cause the defendant filed his motion to quash the affidavit against him for the reasons set forth in said motion to quash which read- as follows:

"Now comes W. A. Sullivan, defendant herein, and files this his demurrer or motion to quash the affidavit herein filed against him and says:

I.

That the pretended ordinance upon which the charge herein made against him is based is null and void because never adopted or passed by the City Council of the City of Shreveport, and because if so adopted or passed, which is specially denied, same is uncertain, indefinite and lacking in precision or not certain to a common intent.

II.

In the alternative and in the event the above pleas and defenses are overruled this defendant says that the so-called ordinance is illegal, null and void and of no effect because the City Council of the City of Shreveport had no power to pass and has no power to enforce such an ordinance, same being unreasonable and unwarranted as applied to the type of car the Shreveport Railways Company, of which this defendant is General Manager, operated on the date named in the affidavit on its Allendale line in the City of Shreveport or proposes to operate on its lines in said City.

This defendant shows that cars of the type operated on the date named in said affidavit and proposed to be operated by this defendant's said company can be and were operated with as much
85 safety for its passengers and the public and with as much comfort and convenience for its passengers and the public with one operative only as can cars manned and operated by both a conductor and motorman.

That the employment of two men on such cars, one adding nothing to the safety, comfort or convenience of passengers or the public would entail upon the said company expenses amounting to not less than Four Thousand Dollars per annum, based on the number of

cars now in operation, which said expense would increase at the rate of not less than Fifteen Hundred Dollars per year for each car that may be added and put in service. That said operators could and would be used otherwise in bettering the service to the advantage of the public. That such an expense would be unnecessary, unwarranted and unreasonable, and that the enforcement of such an ordinance would deprive said defendant's corporation of its property without due process of law and would be a taking of private property not for public use and without adequate compensation in violation of the articles of the Constitution of the State of Louisiana and in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, defendant prays that said pretended ordinance be declared illegal, unconstitutional, null and void and he be discharged hence with costs and for all other decrees necessary and for general relief."

That said Motion to Quash was referred to the merits for trial without prejudice, to the rights of the said defendant, and was regularly tried upon the evidence taken as follows, to-wit: On July 7th, 1917 and July 20th, 1917, as shown by Stenographer's notes of evidence hereto attached and made part hereof by reference.

That said Motion was thereupon overruled by the Court for the reasons set forth in the written opinion thereon, as shown by such opinion hereto attached and made part hereof.

That the Defendant thereupon excepted to the ruling of
86 the Court in overruling said Motion to quash, and was given until this time in which to file his Bill of exceptions thereto, which is accordingly done herewith, and said bill of exceptions having been duly tendered to opposing counsel is now filed and allowed by the Court, on this the 7th day of August, 1917.

D. B. SAMUELS, *Judge.*

Endorsed: Filed Aug. 7th, 1917. D. B. Samuels, Judge.

I hereby certify that the above and foregoing is a true and correct copy of Bill of Exceptions No. 1 filed in the above numbered and entitled cause.

(Signed) D. B. SAMUEL,
*Judge of the City Court.*

*Motion in Arrest of Judgment.*

City Court, Fourth Ward, City of Shreveport, Caddo Parish, Louisiana.

No. 328.

CITY OF SHREVEPORT

vs.

W. A. SULLIVAN.

Now comes W. A. Sullivan, defendant herein, and files this his motion in arrest of judgment and attaching hereto by reference his motion to quash, the evidence taken on trial of the said motion and the opinion of the court overruling said motion says:

That on the face of the record herein he is not guilty of any offense against the laws of the City of Shreveport, complainant herein and that judgment should not be pronounced herein against him.

Wherefore he prays that this his motion be sustained and that he be dismissed hence with costs.

87 WISE, RANDOLPH, RENDALL & FREYER,
*Attorneys for Defendant.*

Endorsed: Filed August 4th, 1917. D. B. Samuels, Judge.

I, David B. Samuels, Judge of the City Court of the City of Shreveport, hereby certify that the above and foregoing is a true and correct copy of the Motion in Arrest of Judgment, filed in the above numbered and entitled cause.

(Signed) D. B. SAMUEL,
*Judge of the City Court.*

*Bill of Exceptions.*

In City Court, Fourth Ward, City of Shreveport, Caddo Parish, Louisiana.

No. 328.

CITY OF SHREVEPORT

vs.

W. A. SULLIVAN.

Be it remembered that the defendant's motion to quash the affidavit against him having come on for trial and having been tried and overruled and a bill of exception to such ruling having been regularly taken and heretofore filed and this defendant having filed

his motion in arrest of judgment for the reason that the pretended ordinance upon which this charge was founded was illegal, null and void for the reason set forth in the motion to quash herein filed by him and said motion in arrest of judgment having been overruled by the court and exception taken to such action of the court by the defendant, the defendant was given until this time to file his bill of exceptions to such ruling which is accordingly done herewith and said bill of exceptions having been duly tendered to opposing counsel is now filed and allowed by this Court on this the 7th day of August, 1917, the defendant attaching hereto his motion to quash, the evidence taken on the trial of same and the opinion of
88 the court overruling said motion to quash.

(Signed) D. B. SAMUEL,
*Judge of the City Court.*

Endorsed: Filed Aug. 7th, 1917. D. B. Samuel, Judge.

I, David B. Samuel, Judge of the City Court of the City of Shreveport, hereby certify that the above and foregoing is a true and correct copy of the bill filed in the above numbered and entitled cause.

(Signed) D. B. SAMUEL,
*Judge of the City Court.*

*Judgment.*

In the City Court of the City of Shreveport, Fourth Ward, Caddo Parish, Louisiana.

No. 328.

CITY OF SHREVEPORT

vs.

W. A. SULLIVAN.

In this case the defendant, W. A. Sullivan, having been duly tried is found guilty as charged and is hereby sentenced to pay a fine of Twenty five & No/100 and costs and in default of payment to serve twenty five days on the public streets and alleys or other public works of the City of Shreveport.

Witness my hand officially this 7th day of August, 1917.

DAVID B. SAMUEL,
*Judge of the City Court.*

Endorsed: Filed Aug. 7th, 1917. D. B. Samuel, Judge.

I, David B. Samuel, Judge of the City Court of the City of Shreveport, hereby certify that the above and foregoing is a true and correct copy of the judgment in the above numbered and entitled cause.

(Signed) D. B. SAMUEL,
*Judge of the City Court.*

89 Proceedings Had in the Supreme Court of the State of Louisiana, as per Præcipe of Counsel, to Be Found at Page 115 of This Transcript.

(*Cause Called, Argued, and Submitted.*)

(Extract from Minutes.)

New Orleans,
Saturday, November 10th, 1917.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Walter B. Sommerville, and Charles A. O'Niell, Associate Justices.

Absent: Paul Leche, Associate Justice.

No. 22822.

CITY OF SHREVEPORT
vs.
W. A. SULLIVAN.

This cause came on this day to be heard and was argued by counsel. Mr. A. B. Rendall opened for the defendant and appellant. Mr. J. F. Phillips, Assistant City Attorney, replied for the plaintiff and appellee, and Mr. Rendall closed the argument. The Court then took the cause under advisement.

(*Final Judgment.*)

(Extract from Minutes.)

New Orleans,
Monday, November 26th, 1917.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Niell, and Paul Leche, Associate Justices.

His Honor, Mr. Justice O'Niell, pronounced the opinion and judgment of the Court in the following case:

90 No. 22822.

CITY OF SHREVEPORT
vs.
W. A. SULLIVAN.

The judgment appealed from is affirmed.

His Honor, Mr. Justice Leche, takes no part, not having heard the argument.

91 (*Opinion of the Court.*)

UNITED STATES OF AMERICA,
*State of Louisiana:*

Supreme Court of the State of Louisiana.

New Orleans,

Monday, November 26th, 1917.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice; Olivier O. Provosty, Walter B. Sommerville, Chas. A. O'Niell, Paul Leche, Associate Justices.

His Honor, Mr. Justice O'Niell, pronounced the opinion and judgment of the Court in the following case:

92 November 26, 1917.

No. 22822.

CITY OF SHREVEPORT

v.

W. A. SULLIVAN.

Appeal from the City Court of Shreveport, Parish of Caddo, D. B. Samuel, Judge.

Mr. Justice O'NIELL:

The defendant appeals from a judgment convicting him of violating an ordinance of the City of Shreveport, requiring owners and superintendents of street railways to have two men, a conductor and a motorman, on each car in operation.

The defense is that the application of the ordinance to certain improved cars, known as safety cars, or one-man cars, recently installed on one of the lines of the railway company (called the Allendale line), is an unnecessary, unreasonable, arbitrary imposition upon the railway company, and is therefore a taking of the company's property without due process of law. The issue is tendered by way of a bill of exception taken to the overruling of a motion to quash the affidavit on which the prosecution was founded.

The city claims that the ordinance was enacted in the exercise of its police power; and the only question presented for decision is whether its application to the improved safety cars is a legitimate exercise of that power.

It is conceded by the learned counsel for the appellant that the enactment of the ordinance was a proper exercise of the police power when there were no other cars in Shreveport—no others to which

the law could apply—than the cars that required two men, a conductor and a motorman, to operate them safely.

The evidence taken on the trial of the motion to quash, attached to the bill of exception, shows that the new cars on the Allendale line are so constructed that the motorman must be constantly engaged in a conscious effort to keep them going; that they are equipped with such safety devices that, if the motorman neg-
93 lects his dutty for an instant, the electric current is automatically cut off, and automatically the emergency brake is applied, the rails are sanded, the car stops, the doors open and the steps drop into place for the exit of passengers. As the door opens only at the forward end, on the right side of the car, the motorman can perform the duties that are usually performed by a conductor when the car is stopped; that is, receive fares, make change, issue transfers, see that passengers get off and on safely, etc.

We conclude, from the testimony of the very competent railway experts who testified in this case, that the improved cars can be conducted and operated more safely by one man than the older cars, to which the ordinance was designed to apply, could be conducted and operated by two men. But it does not follow that the so-called safety cars could not be conducted and operated with even more safety by two men than the same cars can be conducted and operated by one man doing the work of two men. Some of the witnesses for the defendant expressed the opinion that the greater safety of the so-called one-man cars is largely due to confining the responsibilities—along with the duties—of the conductor and motorman to one man. They reasoned that a motorman standing at the only open door of a car where he can observe for himself whether the passengers are safely on or off the car, and reasl-zing that all of the responsibility for the safety of the passengers rests upon him, can perform the duties of both conductor and motorman better than he could perform only the duties of a motorman if the responsibilities were divided and he had to depend upon the conductor for signals and orders. But that argument seems to go too far. It gives no credit to the improved safety appliances of the new cars, and implies that the older cars could be conducted and operated more safely by one man than by two men if the passengers were required to enter and leave the cars through the front door beside the motorman.

We assume that the members of the city council were of the opinion that, although the improved cars can be operated with more safety by one man than the older cars could be operated by
94 two men, nevertheless, the improved cars can be operated with even more safety and convenience to the passengers and the general public by two men than by one man. It is not our province to take issue with the city council as to the wisdom of the ordinance, or the necessity for its application to the new fashioned cars, when it appears that the enforcement of the ordinance may reasonably serve the purpose of public safety, for which it was enacted. It is the duty of the courts to enforce police regulations enacted in good faith and with appropriate or reasonable regard for the protection or safety of the public. The authority of the courts to annul laws or

ordinances that are claimed to have been enacted in the exercise of the police power is confined to enactments that have no real or reasonable relation to public safety or public health or morals—abuses of the police power under pretense of promoting public safety, health or morals. The enforcement of the ordinance in contest does not appear to be arbitrary, unreasonable, or abusive of the police power of the municipality.

The judgment appealed from is affirmed.

*Syllabus.*

It is not the province of the courts to take issue with the law makers as to the wisdom or necessity of a statute or ordinance enacted, ostensibly, in the exercise of the police power. The authority of the courts to annul laws or ordinances that are claimed to have been enacted in the exercise of the police power is confined to enactments that have no real or reasonable relation to public safety, public health or morals—abuses of the police power under pretense of promoting public safety, health or morals.

[Endorsed:] 22822. City v. Sullivan.

Leche, J., takes no part, not having heard the argument.

95 *(Motion and Brief for Rehearing.)*

In the Supreme Court of Louisiana.

No. 22822.

CITY OF SHREVEPORT, Plaintiff and Appellee,

vs.

W. A. SULLIVAN, Defendant and Appellant.

On Appeal from the City Court of the City of Shreveport.

Now comes the defendant and with respect avers that the judgment herein is contrary to the law and the evidence and defendant respectfully prays for a rehearing herein.

There are certain facts in this case which cannot be disputed. It is shown that this defendant's company is engaged in a lawful and useful business; that in proposing the use of the one-man type of car on its Allendale Line it is actuated by a desire to improve and better its service.

It cannot be disputed that the type of car proposed to be used meets all of the obligations of the company towards the public and towards the patrons of the line and that when operated by one man, as it is designed to be operated, it fulfills all requirements.

In Your Honors' opinion you endorse our position and accept the testimony of our witnesses without qualification, saying, "we con-

clude, from the testimony of the very competent experts who testified in this case, that the improved cars can be conducted and operated more safely by one man than the older cars, to which the ordinance was designed to apply, could be conducted and operated by two men * * * some of the witnesses for the defendant express the opinion that the greater safety of the so-called one-man cars is largely due to confining the responsibilities along with the duties of
96 the conductor and motorman—to one man. They reason that a motorman standing at the only open door of the car, where he can observe for himself whether the passengers are safely on or off the car and realizing that all of the responsibility of the safety of the passengers rests upon him, can perform the duties of both conductor and motorman better than he could perform only the duties of the motorman if the responsibility were divided and he had to depend upon the conductor for signals and orders."

Now it must be borne in mind that the other type of car, that is to say, a car not equipped like the cars we propose to operate, is a standard car and that our operation of such standard cars with a motorman and conductor is in fulfillment in all respects of our obligations as a carrier of passengers operating on the public thoroughfares.

It seems plain, then, to us that if the use of this new type of car enables us to perform and execute all of the duties incumbent upon us, we are entitled to the untrammeled benefit of this scientific discovery or invention in our line of business.

A careful reading of the opinion leads us to the conclusion that Your Honors' investigation of the record in the case has lead you to the adoption of our views or theory as to the benefits to be derived from the operation of the one-man safety type of cars and that if the proposition contended for by us in this matter had been submitted to Your Honors, sitting as a commission or board and not in your high capacity as a court, reviewing the finding of a legislative branch of the government, you would have decided in our favor.

We take it that as a citizen with the constitutional guarantees running in our favor we cannot be deprived of the benefit of this invention.

In the syllabus in the case Your Honors say:

97 "It is not the province of the court to take issue with the lawmakers as to the wisdom or necessity of the statute and ordinance enacted, ostensibly, in the exercise of the police powers. The authority of the courts to annul laws or ordinances that are claimed to have been enacted in the exercise of the police power is confined to enactments that have no real or reasonable relation to public safety, public health or morals—abuses of the police power—under pretense of promoting public safety, health or morals."

The record in this case shows fully the history of the ordinance involved in this proceeding. For the purpose of this argument it is conceded that the ordinance was adopted in 1907, necessarily then without relation to the type of cars now under consideration because such cars are shown to be a recent invention. It is plain that the old council composed of the mayor and fourteen councilmen from

the several wards of Shreveport adopted the ordinance with reference to a condition of affairs then existing and was making legislation to govern cars of a type then in use.

As to the type of cars we propose to use the situation is entirely different and we are dealing with the present council of Shreveport, another set of "wilful men" who, as shown by the record, refused to investigate the matter and to give us a trial, contenting themselves with saying that they had no objection but that any citizen might prosecute us under the old ordinance.

With all due and proper respect for Your Honors' opinion in this case we submit that as a citizen of this State and of the United States we are guaranteed by the Constitution the right in the conduct of our lawful business to the benefit of those inventions or discoveries in our line of business that will enable us to transact our business in a safer and better way and that no City Council can under any pretense of regulation deprive us of these constitutional rights.

98 For the Court to say that we are left to the mercy of a body like the city council of Shreveport in a matter of this kind is to leave us helpless. For the sake of the argument we will admit that the council is composed of practical men and men of common sense, but it cannot be claimed that those qualifications endow them with any ability to pass on expert questions of good railroading any more than on the practice of medicine or surgery, and the great body of citizens of Shreveport ought not to be deprived of the improvement in service we are trying to give them. We believe the rule is correctly expressed in the opinion of the Supreme Court of the United States in the case of Lawton vs. Steele, 152 U. S., 133, 38 Law. Ed. 385, where Mr. Justice Brown said:

"The Legislature may not under the guise of protecting the public interest, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is the proper exercise of its police power is not final or conclusive but is subject to the supervision of the courts."

Or, as said by Mr. Justice Day, in the case of Robbins vs. Los Angeles, 195 U. S. 223, 49 Law Ed. 169:

"It may be admitted that every intendment is to be made in favor of the lawfulness of the exercise of municipal power, making regulations to promote the public health and safety, and it is not the province of the courts, except in clear cases, to interfere with the exercise of the power reposed by law in municipal corporations for the protection of local rights and the health and welfare of the people in the community. But, notwithstanding this general rule of the law, it is now thoroughly well settled by the decisions of this court that municipal by-laws and ordinances and even legislative enactments, undertaking to regulate useful business enterprises, are subject to investigation in the courts with a view of determining whether

99 the law or ordinance is a lawful exercise of the police power, or whether, under the guise of enforcing police regulations, there has been an unwarranted and arbitrary interference with the

constitutional rights to carry on a lawful business, to make contracts, or to use and enjoy property."

We find the principle for which we are contending expressed in a most positive way in the opinion of Mr. Justice Harlan in the case of Connolly vs. Union Sewer Pipe Company, 184 U. S. 540, 46 Law Ed. 679, as follows:

"The question of constitutional law to which we have referred (the equal protection of laws) cannot be disposed of by saying that the statute in question may be referred to what are called the police powers of a state which, as often stated by this court, were not included in the grants of power to the general government, and therefore were reserved to the states when the Constitution was ordained. But as the Constitution of the United States is the supreme law of the land, anything in the Constitution or statutes of the states to the contrary notwithstanding, a statute of a state, even when avowedly enacted in the exercise of its police powers, must yield to that law. No rights granted or secured by the Constitution of the United States can be impaired or destroyed by a state enactment, whatever may be the source from which the power to pass such enactment may have been derived. 'The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is the supreme law.' The state has undoubtedly the power by appropriate legislation, to protect the public morals, the public health and the public safety; but, if in any necessary operation, its regulations looking to either of those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void."

In the case at bar Your Honors say that our argument
100 seems to go too far and that we give no credit to the improved safety appliances of the new cars. On the contrary we are earnestly contending that due credit be given this type of car and our argument goes to the legitimate end that in the operation of cars so equipped we can and will discharge our full duty to the public and toward our passengers with such a car upon which a second man could render no useful service; that the release of such an unnecessary man would enable us to put him in some useful position with the resultant betterment of our service.

Our position is that this ordinance requiring a second man on such cars has no real or reasonable relation to the public safety, is absolutely and entirely arbitrary and as such not enforceable against our constitutional guarantees and in your opinion Your Honors have practically so decided.

Your findings of fact distinguish the case at bar from the "full crew acts" because in those decisions the Supreme Court of the United States stressed and emphasized the fact that there was a great deal of room for controversy on the proposition of whether or not a full crew of men was necessary for the safe operation of the cars. Your Honors, as we read your opinion, have been fully satisfied as to our claim or contention that one man is all that is needed for the safe and convenient operation of our cars and in

view of the overwhelming evidence on this proposition it is impossible to conceive how you could have held otherwise. In view of the importance of the decision of Your Honors upon all points involved, affecting as it will the very vital interests of our company, in view of the fact, as shown by the record, that cars of the type involved are coming into general use throughout the whole country very rapidly and in view of the fact that their use has met with approval everywhere they have been put in operation we feel that we are entitled to relief from the arbitrary and unwarranted position of the Council of Shreveport.

101 And it is submitted that a rehearing would work no harm or injury to any party and would give us the benefit of the views of the Justice who was absent at the former argument, and, who, consequently, could take no part in the decision.

It should be borne in mind that the case at bar is different from one where Your Honors might be called upon to pass upon an enactment of the Legislature. Under the charter provisions the Council of Shreveport is authorized to adopt and enforce ordinances, not in an unlimited way but only as such are reasonably necessary and proper to carry out the objects of incorporation. Certainly in the light of the evidence in the case there is nothing reasonable about this ordinance as applied to the one-man safety type of cars.

Respectfully submitted,

WISE, RANDOLPH, RENDALL & FREYER,
*Attorneys.*

(Endorsed:) No. 22822—In the Supreme Court of Louisiana—City of Shreveport, Plaintiff and Appellee, vs. W. A. Sullivan, Defendant and Appellant—Motion and brief for rehearing—Filed Dec. 10, 1917—(Signed) Paul E. Mortimer, Clerk.

(*Rehearing Refused.*)

(Extract from Minutes.)

New Orleans,

Thursday, January 3rd, 1918.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Niell, and Paul Leche, Associate Justices.

102 By the COURT:

No. 22822.

CITY OF SHREVEPORT

vs.

W. A. SULLIVAN.

It is ordered that the rehearing applied for in this case be refused.

103 UNITED STATES OF AMERICA,
*State of Louisiana:*

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify *that* the foregoing one hundred and two (102) pages, to be a true and correct copy of certain of the proceedings had in the City Court of the City of Shreveport, in a certain suit wherein City of Shreveport, was plaintiff, and W. A. Sullivan, was defendant; and, also, of certain of the proceedings had in this the Supreme Court of the State of Louisiana on the appeal taken by the said defendant, which appeal is now on the files of this Court under the No. 22822, (as per præcipe of counsel to be found at page 115 of this transcript.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 11th day of April, Anno Domini, one thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
*Clerk, Supreme Court of Louisiana.*

104 UNITED STATES OF AMERICA,
*State of Louisiana:*

Supreme Court of the State of Louisiana.

I, Frank A. Monroe, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 11th day of April, Anno Domini, one thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
*Chief Justice, Supreme Court of Louisiana.*

105 UNITED STATES OF AMERICA,
*State of Louisiana:*

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the States of Louisiana, hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Frank A. Monroe is the Chief Justice of said Court and that his signature to the above certificate is genuine.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 11th day of April, Anno Domini, one thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
*Clerk, Supreme Court of Louisiana.*

106 *(Original Petition for Writ of Error.)*

The Supreme Court of the State of Louisiana.

W. A. SULLIVAN, Plaintiff in Error,

vs.

CITY OF SHREVEPORT, Defendant in Error.

The petition of W. A. Sullivan, defendant and appellant in the cause styled City of Shreveport vs. W. A. Sullivan and numbered 22822 on the docket of the Supreme Court of the State of Louisiana, by E. H. Randolph, his attorney, hereby sets forth that on or about the 26th day of November, A. D. 1917, the Supreme Court of the State of Louisiana made and entered a final order and judgment herein in favor of the City of Shreveport and against this petitioner, in which final order and judgment and proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of this petitioner, all of which will more in detail appear from the assignment of errors which is filed with this petition.

That the said Supreme Court of the State of Louisiana is the highest court of the said State of Louisiana in which a decision in this suit and matter could be had.

Wherefore the said W. A. Sullivan petitions and prays that a writ of error from the Supreme Court of the United States may issue in this cause to the Supreme Court of the State of Louisiana for the correction of errors so complained of and that a transcript of the record, proceedings, and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 23rd day of March, A. D. 1918.

E. H. RANDOLPH,
*Attorney for W. A. Sullivan.*

[Endorsed:] No. 22822. Supreme Court Louisiana. W. A. Sullivan, Plaintiff-in-error, vs. City of Shreveport, La., Defendant-in-error. Petition for writ of error. Filed Mar. 26th, 1918. Percy J. Heines, Deputy Clerk.

107 *(Order Granting Writ of Error.)*

The Supreme Court of the State of Louisiana.

W. A. SULLIVAN, Plaintiff in Error,

vs.

CITY OF SHREVEPORT, Defendant in Error.

The above entitled matter coming on to be heard upon the petition of plaintiff in error for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Louisiana, and upon examination of said petition and the record in said matter, and desiring to give the plaintiff in error an opportunity to present in the Supreme Court of the United States the question presented by the record in said matter—

It is ordered that a writ of error, be, and is hereby, allowed to this Court from the Supreme Court of the United States and that the bond presented by said petitioner be and the same is hereby approved.

Dated March 26, 1918.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
*Chief Justice of the Supreme Court of the State of Louisiana.*

[Endorsed:] No. 22822. Supreme Court Louisiana. W. A. Sullivan, Plaintiff-in-error, vs. City of Shreveport, La., Defendant-in-error. Order Granting Writ of Error. Filed Mar. 26, 1918. Percy J. Heines, Deputy Clerk.

108 *(Original Assignment of Errors.)*

The Supreme Court of the State of Louisiana.

W. A. SULLIVAN, Plaintiff in Error,

vs.

CITY OF SHREVEPORT, Defendant in Error.

Assignment of Errors.

Now comes W. A. Sullivan, plaintiff in error, and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Louisiana in the matter entitled City of Shreveport vs. W. A. Sullivan, No. 22822, there is manifest error in this towit:

That the court erred in holding that the ordinance of the City Council of the City of Shreveport finally adopted on May 14th, 1907, requiring both a conductor and a motorman on street cars of the type of those used on the Allendale Line of the Railways Company, of which this plaintiff in error was superintendent, was not in conflict with and in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States providing that no State shall deprive any person of life, liberty or property without due process of law.

Wherefore, the said W. A. Sullivan prays that the said judgment and decision aforesaid may be reversed, annulled and together held for naught and that he may be restored to all things which he has lost by the action and because of the said judgment and decision.

E. H. RANDOLPH,
*Attorney for Plaintiff in Error.*

[Endorsed:] No. 22822. Supreme Court Louisiana. W. A. Sullivan, Plaintiff-in-error, vs. City of Shreveport, La., Defendant-in-error. Assignment of errors. Filed Mar. 26th, 1918. Percy J. Heines, Deputy Clerk.

109 *(Copy of Bond for Writ of Error.)*

Know all men by these presents that we, W. A. Sullivan, as principal and H. B. Kearn, as surety are firmly bound unto the City of Shreveport in the sum of One Thousand Dollars to be paid to the said obligee, its successors, representatives or assigns; for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Dated at Shreveport this 23rd day of March, A. D. 1918.

Whereas the above named plaintiff in error hath prosecuted a writ of error in the Supreme Court of the United States to reverse a judgment rendered in the above entitled action by the Supreme Court of the State of Louisiana:

Now the condition of this obligation is such that if the above named plaintiff in error shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

(Signed) W. A. SULLIVAN.
(Signed) H. B. KEARN.

I hereby approve the foregoing bond and sureties this 23rd day of March, A. D. 1918.

(Signed) FRANK A. MONROE,
[SEAL.] *Chief Justice of the Supreme Court of the State of Louisiana.*

STATE OF LOUISIANA,
*Parish of Caddo:*

Before me, the undersigned authority personally came and appeared H. B. Kearn, to me well known, who being first duly sworn deposes and says that he is the surety on the above and foregoing bond; that he is worth, over and above all his debts and obligations, in assets that can be subjected to levy under execution the amount for which he has bound himself in the above bond.

110 (Signed) H. B. KEARN.

Sworn to and subscribed before me on this the 23rd day of March, 1918.

(Signed) A. B. FREYER,
[SEAL.] *Notary Public, Caddo Parish, Louisiana.*

STATE OF LOUISIANA,
*Parish of Caddo:*

Before me, the undersigned authority, personally came and appeared W. A. Sullivan, to me well known, who being first duly sworn deposes and says that he is informed and believes that H. B. Kearn, the surety on the above and foregoing bond, is worth, over and above all his debts and obligations, in assets that can be subjected to levy under execution the amount for which said surety has bound himself on said bond.

(Signed) W. A. SULLIVAN.

Sworn to and subscribed before me on this the 23rd day of March, 1918.

(Signed) A. B. FREYER,
[SEAL.] *Notary Public, Caddo Parish, La.*

Endorsed: No. 22822. Supreme Court of Louisiana. W. A. Sullivan, Plaintiff in error, vs. City of Shreveport, La., Defendant in error. Bond for Writ of Error. Filed March 26th, 1918. (Signed) Percy J. Heines, Deputy Clerk.

111 *Original Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorab
the Judges of the Supreme Court of the State of Louisiana, Gre
ing:

Because in the record and proceedings, as also in the rendition
the judgment of a plea which is in the said Supreme Court of t
State of Louisiana before you, or some of you, being the highe
court of law or equity of the said State in which a decision could
had in the said suit between City of Shreveport, Louisiana, Plaint
and Appellee, and W. A. Sullivan, Defendant and Appellan
wherein was drawn in question the validity of a treaty or statute
or an authority exercised under, the United States, and the decisi
was against their validity; or wherein was drawn in question t
validity of a statute of, or an authority exercised under, said Sta
on the ground of their being repugnant to the Constitution, treati
or laws of the United States, and the decision was in favor of su
their validity; or wherein was drawn in question the constructi
of *the* clause of the Constitution, or of a treaty, or statute
112 or commission held under the United States, and the decisi
was against the title, right, privilege, or exemption special
set up or claimed under such clause of the said Constitution, treat
statute, or commission; a manifest error hath happened to the gre
damage of the said W. A. Sullivan, defendant and appellant, as b
his complaint appears. We being willing that error, if any ha
been, should be duly corrected, and full and speedy justice done
the parties aforesaid in this behalf, do command you, if judgme
be therein given, that then under your seal, distinctly and openl
you send the record and proceedings aforesaid, with all things co
cerning the same, to the Supreme Court of the United States, t
gether with this writ, so that you have the same at Washingto
within 30 days from the date hereof, in the said Supreme Court,
be then and there held, that the record and proceedings aforesai
being inspected, the said Supreme Court may cause further to b
done therein to correct that error, what of right, and according to th
laws and customs of the United States, should be done.

Witness the honorable, Edward Douglass White, Chief Justice
the Supreme Court of the United States, the 26th day of March, i
the year of our Lord one thousand nine hundred and eighteen.

[SEAL.] H. J. CARTER,
*Clerk of the District Court of the United States*
*for the Eastern District of Louisiana.*

Allowed by

FRANK A. MONROE,
*Chief Justice of the Supreme Court of the*
*State of Louisiana.*

[Endorsed:] No. 22822. W. A. Sullivan, Plaintiff in Error, versus City of Shreveport, Louisiana, Defendant in Error. Writ of Error. Supreme Court of Louisiana. Filed March 26, 1918. Percy J. Heines, Deputy Clerk.

113 *Certificate of Lodgment.*

UNITED STATES OF AMERICA,
*State of Louisiana:*

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that there was lodged with me as such clerk, on March 26th, 1918, in the cause entitled: W. A. Sullivan, Plaintiff-in-error, vs. City of Shreveport, Defendant-in-error:

1st. The original petition for writ of error, as herein set forth.
2nd. The original assignment of errors, as herein set forth.
3rd. The original bond for writ of error, a copy of which is herein set forth.
4th. The original writ of error as herein set forth.
5th. Two copies of the writ of error; one copy to be served on the defendant in error, and one copy to be lodged in my office.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 11th day of April, Anno Domini, One thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
*Clerk Supreme Court of Louisiana.*

114 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the city of Shreveport, through its Mayor, John McW. Ford, Shreveport, La., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, at New Orleans, wherein W. A. Sullivan is the plaintiff-in-error and the city of Shreveport is the defendant-in-error, to show cause, if any there be, why the judgment rendered against the said W. A. Sullivan, plaintiff-in-error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of United States, this 26th day of March in the year of our Lord one thousand nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
*Chief Justice of the Supreme Court of the State of Louisiana.*

Service of the within and foregoing citation and of the accompanying writ of error acknowledged.
Dated March 28th, 1918.

CITY OF SHREVEPORT, LA.,
By LEWELL C. BUTLER,
*City Attorney and Attorney for Defendant in Error.*

[Endorsed:] Supreme Court of the State of Louisiana. No. 22822. W. A. Sullivan, Plaintiff-in-error, vs. City of Shreveport, Defendant-in-error. Citation for Return. Filed March 30, 1918. Percy J. Heines, Deputy Clerk.

115 (*Præcipe of Counsel.*)

In the Supreme Court of Louisiana.

No. 22822.

CITY OF SHREVEPORT
vs.
W. A. SULLIVAN.

The Clerk will please prepare the transcript and copy therein the following instruments:
The affidavit.
The motion to quash.
The motion to reopen the case.
The proceedings of the Council of March 12, 1907, April 9, 1907, and May 14th, 1907.
The testimony taken July 7th and July 20th, 1917, on trial of the motion to quash.
The bill of exceptions to the ruling of the trial court in overruling the motion to quash.
The motion in arrest of judgment.
The bill of exceptions to the ruling of the trial court in overruling the motion in arrest of judgment.
The judgment.
The minutes of the Supreme Court showing argument and submission of the case.
The minutes of the Court showing rendition of the opinion.
The opinion and judgment.
The minutes showing the filing of the motion for rehearing.

The minutes showing that rehearing was refused.
The petition and order for writ of error.
Assignment of Errors.
Appeal bond and affidavits.
Approval of bond.
Writ of Error.
Citation in error and acknowledgment of service.
Præcipe.
Clerk's certificate.
April 2nd, 1918.

(Signed) E. H. RANDOLPH,
*Atty. for W. A. Sullivan.*

116 (Signed) LEWELL C. BUTLER,
*City Attorney.*

Endorsed: No. 22822. Supreme Court of Louisiana. W. A. Sullivan, Plaintiff in error, vs. City of Shreveport, Defendant in error. Præcipe of Counsel. Filed April 4th, 1918. (Signed) Percy J. Heines, Deputy Clerk.

117 (*Return to Writ.*)

UNITED STATES OF AMERICA,
*State of Louisiana:*

Supreme Court of the State of Louisiana.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of certain of the proceedings in the within entitled case, together with all things concerning the same, (as per præcipe of counsel to be found at page 115 of this record).

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 11th day of April, Anno Domini, one thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
*Clerk Supreme Court of Louisiana.*

*Costs.*

| | |
|---|---|
| Costs paid by City of Shreveport for filing transcript in the Supreme Court | $10.00 |
| Costs paid by W. A. Sullivan, plaintiff in error, for preparation of transcript to be filed in the Supreme Court of the United States | $52.00 |
| | $62.00 |

Endorsed on cover: File No. 26448. Louisiana Supreme Court. Term No. 981. W. A. Sullivan, plaintiff in error, vs. The City of Shreveport. Filed April 18th, 1918. File No. 26448.

## INDEX.

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Dobbins vs. St. Angeles, 195 U. S. p. 223..Page 13 et seq.

# In The Supreme Court of the United States

W. A. SULLIVAN,
Plaintiff in Error,
vs.
CITY OF SHREVEPORT,
Defendant in Error,

Attorney for Plaintiff in Error,
E. H. RANDOLPH.

To the Honroable Supreme Court of the United States:

May It Please Your Honors: This is a writ of error from this Honorable Court directed to the Supreme Court of Louisiana, to review the judgment of the Supreme Court of Louisiana on appeal taken to it from a decision of the City Court of the City of Shreveport, La., D. B. Samuel, Judge.

The City Court decided the case against the plaintiff in error, which decision was reported by 42nd La. Reports, page 573 et seq., and this case is brought here to review the findings of the Supreme Court of Louisiana .

There were two defenses raised in this prosecution; one was that the ordinance in question was not legally passed

before the City Council of the City of Shreveport, and the other defense, and the one with which we are concerned here, is that the ordinance in question is unconstitutional and void for the reason that it is an attempt on the part of the City Council to deprive us of our property without due process of law, in violation of Section 1 of the 14th amendment of the Constitution of the United States.

The opinion of the Supreme Court of Louisiana is printed in the transcript of record on pages 62 to 64 inclusive, and is as follows:

> "The defendant appeals from a judgment convicting him of violating an ordinance of the City of Shreveport, requiring owners and superintendents of street railways to have two men, a conductor and a motorman, on each car in operation.
>
> "The defense is that the application of the ordinance to certain improved cars, known as safety cars, or one-man cars, recently installed on one of the lines of the railway company (called the Allendale line) is an unnecessary, unreasonable, arbitrary imposition upon the railway company, and is therefore a taking of the company's property without due process of law. The issue is tendered by way of a bill of exception taken to the overruling of a motion to quash the affidavit on which the prosecution was founded.
>
> "The city claims that the ordinance was enacted in the exercise of its police power; and the only

question presented for decision is whether its application to the improved safety car is a legitimate exercise of that power.

"It is conceded by the learned counsel for the appellant, that the enactment of the ordinance was a proper exercise of the police power when there were no other cars in Shreveport---no others to which the law could apply---than the cars that required two men, a conductor and a motorman, to operate them safely.

"The evidence taken on the trial of the motion to quash, attached to the bill of exception, shows that the new cars on the Allendale line are so constructed that the motorman must be constantly engaged in a conscious effort to keep them going; that they are equipped with such safety devices that, if the motorman neglects his duty for an instant, the electric current is automatically cut off and automatically the emergency brake is applied, the rails are sanded, the car stops, the doors open, and the steps drop into place for the exit of passengers. As the door opens only at the forward end, on the right side of the car, the motorman can perform the duties that are usually performed by a conductor when the car is stopped; that is, receive fares, make change, issue transfers, see that passengers get off and on safely, etc.

"We conclude, from the testimony of the very competent railway expert who testified in this case, that the improved cars can be conducted and operated more safely by one man than the older cars, to which the ordinance was designed to apply, could be conducted and operated by two men. But it does

not follow that the so-called safety cars could not be operated with even more safety by two men than the same car can be conducted and operated by one man doing the work of two men. Some of the witnesses for the defendant expressed the opinion that the greater safety of the so-called one-man car is largely due to confining the responsibilities, along with the duties, of the conductor and motorman, to one man. They reasoned that a motorman standing at the only open door on a car where he can observe for himself whether the passengers are safely on or off the car, and realizing that all of the responsibility for the safety of the passengers rests upon him, can perform the duties of both conductor and motorman better than he could perform only the duties of a motorman if the responsibilities were divided, and he had to depend upon the conductor for signals and orders. But that argument seems to go too far. It gives no credit to the improved safety appliances of the new car, and implies that the older cars could be conducted and operated more sofely by one man than by two men, if the passengers were required to enter and leave the car through the front door beside the motorman.

"We assume that the members of the City Council were of the opinion that, although the improved cars can be operated with more safety by one man than the older car could be operated by two men, nevertheless, the improved cars can be operated with even more safety and convenience to the passengers and the general public by two men than by one man. I is not our province o take issue with the City Council as to the wisdom of the ordinance, or the necessity of its application to the new-fash-

ioned cars, when it appears that the enforcement of the ordinance may reasonably serve the purpose of public safety, for which it was enacted. It is the duty of the courts to enforce police regulations enacted in good faith and with appropriate or reasonable regard for the protection or safety of the public. The authority of the courts to annul laws or ordinances that are claimed to have been enacted in the exercise of the police power is confined to enactments that have no real or reasonable relation to public safety or public health or morals---abuse of the police power under pretense of promoting public safety, health or morals. The enforcement of the ordinance in contest does not appear to be arbitrary, unreasonable, or abuseive of the police power of the municipality. The judgment appealed from is affirmed."

Our writ of error is found on page 72 of the transcript and is as follows:

"Now comes W. A. Sullivan, plaintiff in error, and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Louisiana, in the matter entitled City of Shreveport vs. W. A. Sullivan, No. 22,-822, there is manifest error in this, to-wit:

"That the court erred in holding that the ordinance of the City Council of the City of Shreveport, finally adopted on May 14, 1907, requiring both a conductor and a motorman on street cars of the type of those used on the Allendale line of the Railways Company, of which this plaintiff in error was superintendent, was not in conflict with and in vio-

lation of the provisions of the Fourteenth Amendment to theConstitution of the United States, providing that no State shall deprive any person of life, liberty, or property without due process of law.

"Wherefore, the said W. A. Sullivan prays that the said judgment and decision aforesaid may be reversed, annulled and together held for naught, and that he be restored to all things which he has lost by the action because of the said judgment and decision.

"E. H. RANDOLPH,

"Atorney for Plaintiff in Error."

It will be seen from the above that W. A. Sullivan, manager of the Railways Company, plaintiff in error, was convicted of violating an ordinance of the City of Shreveport requiring the company to have two men, a conductor and a motorman, on each car in operation. This ordinance has been in effect some years in Shreveport, but with the advent in the last two or three years of certain improved cars known as the safety or one-man cars, recently installed on one of the lines of the said Railways Company, the contention is that the application of this ordinance to such cars is unnecessary, unreasonable, and an imposition upon the Railways Company, and amounts to the taking of the company's property without due process of law. The whole contro-

versy revolves around the proposition whether or not this ordinance, passed many years ago, can be fairly applied to the new invention of the one-man safety cars, and therefore brings up the consideration of whether the attempt of the City of Shreveport to enforce its application and impose a greater cost upon the Railways Company by the operation of such new-fashioned cars, when it is fully shown that the operation of the improved cars with only one man is just as safe, if not safer, than the operation of the old-fashioned cars with two men, and whether such effort is a legitimate exercise of the police power of the City of Shreveport.

The decision of the Supreme Court of Louisiana, in which one of the Justices did not participate, recognized that the instant case was very close, but finally solved it in holding to the theory that they would not interfere with the operation of the ordinance, the language being, "The enforcement of the ordinance in contest does not appear to be arbitrary, unreasonable or abusive of the police power."

Quoting from the decision of the Supreme Court of Louisiana, page 575:

> "We conclude from the testimony of the very competent railway expert who testified in this case, that the improved cars can be conducted and operated more safely by one man than the one to which

> the ordinance was designed to apply, could be conducted and operated by two men."

Our contention on the facts in this case, and the correctness thereof, is sustained by the Supreme Court of Louisiana. Therefore, we will not discuss the testimony in the record wherein the City of Shreveport attempts to show that the conclusion found by the Supreme Court of Louisiana upon the facts as to the relative safety of the two methods, was not true; so we have a case admitted by the Supreme Court of Louisiana in its finding of fact where the ordinance in question, which requires two men on each car designed to apply to the old-fashioned cars, which really needed two men to make them safe in operation, should be imposed on the new-fashioned car, which the Supreme Court of Louisiana finds can be just as safely operated with one man as the old cars were with two. Having so found, it would seem the logical conclusion for the Supreme Court of Louisiana to have concluded that these two styles of cars, one the old-fashioned, and the other the new-fashioned, the old-fashioned being operated with two men and the new with only one man, were equally safe. We cannot understand how from such a conclusion it could be held that the imposition of the cost of a second man on the new car is

anything less than putting a burden upon the operation of the company business, and therefore, to that extent, taking the property of the said Railways Company without due process of law. The Supreme Court of Louisiana attempts to justify itself by the expression:

> "We assume that the members of the City Council were of the opinion that, altho the improved cars can be operated with more safety by one man than the older car could be operated by two men, nevertheless, the improved cars can be operated with even more safety and convenience to the pasesngers and the general public by two men than by one man."

But if your Honors please, this presents the question, can this assumption be indulged? Even if this presumption can be entertained, and with all due respect we submit this assumption is not justified, because when this ordinance was passed the City Council had no knowledge as to the improvements which would be made in the operation of street cars of the type in question, and was never intended to apply to a situation like the present one, and its attempt therefore to so apply it, confessedly does not add one iota to the safety of the passengers in the new car over the safety of the passengers in the old cars, cannot be allowed. The fact is that the invention of this new car is a struggle towards industrial development which demands that results be produced

without undue attacks upon the administration of such properties. One of the acute problems of the day is the arrangement of some *modus videndi* of the street car system of the country by which either an increase in fares or reduction in expenses might be found, and the device of this new car, operated by one man, is conceded to be, by the Supreme Court of Louisiana, just as safe as the other car in operation, which takes two men, in the City of Shreveport.

The real superiority of safety is shown in the record of the transcript on pages 31 to 44 inclusive, but it is not necessary, we submit, for us to show a superiority. If we show that an equality of safety between the old cars as operated in Shreveport is no greater than that of the new cars operated by one man, then we have reached that point where the City Council cannot interfere with our administration under the guise exercise of the police power.

There is a theory in many quarters that the first thing is to supply positions for as many workers or laborers as possible, regardless of the economy of the question. The fact that the new device of the one-man car makes it practicable to drop one of the operators in the necessity of sound economy, without any impairment of the public safety in the operation of the car, is a principle of movement of in-

dustrial evolution which should be encouraged. It is true that the Chinese theory of administering government is different. In that country a dozen men are employed to do the work that in this country is done by only one man with a machine.

The case is largely simplified by the findings of the Supreme Court. They find that there is an equality of safety in the new plan of the Railways Company to install new cars with one man and the old cars operated with two men.

Be it remembered that the City Council in dealing with the application of its ordinance to the new cars, does not require in the interest of general safety that all of its old cars be turned into new cars and be operated by two men, but they are satisfied that the old car should remain in operation, provided two men are used, and so the case imagined by the Supreme Court of Louisiana, that these new cars might be operated with even more safety by two men, than by one man, was not in the minds of the City Council, for they still tolerate the old cars, provided we employ two men.

We submit that the expressions of the Supreme Court above referred to, are too slender a foundation upon which

to rest the unnecessary application of this ordinance to the new cars.

> "The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive but subject to the supervision of the courts."
>
> Lawton vs. Steele, 152 U. S. 133.

> "It may be admitted that every intendment is to be made in favor of the lawfulness of the exercise of municipal power, making regulations to promote the public health and safety, and that it is not the province of the courts, except in clear cases, to interfere with the exercise of the power reposed by law in municipal corporations for the protection of local rights and the health and welfare of the people in the community. But, notwithstanding this general rule of the law, it is now thoroughly well settled by decisions of this court, that municipal by-laws and ordinances, and even legislative enactments undertaking to regulate useful business enterprises, are subject to investigation in the courts with a view of determining whether the law or ordinance is a lawful exercise of the police power, or whether, under the guise of enforcing police regulations, there has been an unwarranted and arbitrary interference with the constitutional rights to carry on a lawful business or make contracts, or to use and enjoy property."

Dobbins vs. Los Angeles, 195 U. S. 223.

We therefore pray that the decisions below be reversed and plaintiff be discharged.

Respectfully submitted,

E. H. RANDOLPH,

Attorney for Plaintiff in Error.

FILED
NOV 13 1919
JAMES D. MAHER,
CLERK.

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919

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W. A. SULLIVAN,
Plaintiff in Error,

versus

CITY OF SHREVEPORT, LOUISIANA,
Defendant in Error.

No. 89

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## Original Brief of Defendant in Error.

JAMES E. SMITHERMAN,
B. F. ROBERTS,
JOHN F. PHILLIPS,
Attorneys for Shreveport, Louisiana,
Defendant in Error.

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919

---

W. A. SULLIVAN,
Plaintiff ~~Defendant~~ in Error.

versus

**No. 89**

CITY OF SHREVEPORT, LOUISIANA,
Defendant ~~Plaintiff~~ in Error,

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## Original Brief of Defendant in Error.

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### STATEMENT OF CASE.

Defendant was convicted of violating a city ordinance requiring a motorman and conductor to be on duty on all street cars operated in Shreveport.

Defendant attacks the ordinance in a motion to quash, setting forth (1) its unreasonableness, (2)

that it was not regularly adopted, (3) and that it is ultra vires. See motion to quash.

The minutes of the City Council of March 12th, 1907, show that said ordinance passed its first reading on that date. On April 9th, 1907, the ordinance was referred to a committee; on May 14th, 1907, it passed its second and third reading, with an amendment inserting the word "superintendent."

Shreveport was then operating under a special charter, granted by Act 158 of 1898, as amended by Act 67 of 1904. Its police powers were defined as follows: "To regulate and preserve the peace and good order of the city, etc.," and "To regulate the proper government of * * * passenger and street cars which run in the streets and within the limits of the city."

On December 8th, 1904, the Council passed rules governing the enactment of ordinances, Rule No. 12 providing for the passage of ordinances, and this rule was observed in the enactment of the ordinance in question.

The Constitution does not prescribe a method of enacting city ordinances, and Section 33 of Act 136

of 1898 does not apply to Shreveport. The Council, however, prescribed for its own government rules similar to those governing the passage of ordinances in other cities. (DeRidder vs. Head, 139 La. 840.) The ordinance passed its several readings in the same manner as all other ordinances in Shreveport have since been enacted.

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SYLLABUS.

1. Power to regulate implies full power over the things to be regulated. Gibbons vs. Ogden (9 Wheat. 1).
2. Under the general police power municipal corporations have the right to require a certain number of servants on each car, as a driver and a conductor. McQuillan Mun. Corporations, Vol. 3, page 2095.
3. Ordinances under the general police power may require a conductor and a driver on each car. Covington Ry. Co. vs. Berry, 93 Ky., page 43; 15 L. R. A., page 604; 40 Am. Atl. Rep. 161; Trenton Hose Ry. Co. vs. City of Trenton (N. J.), 11 L. R. A. 410.
4. Requiring an agent in addition to a driver on each street car is reasonable. State vs. Trenton (N. J.), 20 Atl. Rep. 1076.
5. The City of Shreveport has the power to "make and pass such by-laws and ordinances as are necessary and proper." Sec. 11 of Act 158 of the General Assembly of Louisiana for 1898.
6. The City of Shreveport has full power to "regulate the proper government of * * * passenger and street

cars which run in the streets and within the city limits." Act 67, General Assembly of La. for 1904, page 179.

7. In passing upon the validity of an ordinance regard must be had to the substance rather than to the form, and purpose and intention of the council as same appears in the ordinance, rather than to the niceties of language. McQuillan Mun. Corp., Vol. 2, page 1742.

8. The certificate of the clerk of the city council that an ordinance has been adopted is prima facie proof of regular adoption. Moody & Co. vs. Sportorno, 112 La. 1008.

9. The same accuracy of expression is not expected of municipal councils as will be looked for in the language of higher legislative bodies.

10. Every reasonable intendment of ordinances should be looked for in order to give validity to an ordinance which is within the municipal power. Words signifying the will of the governing body should be given full effect, without regard to the niceties of diction. 28 Cyc. 352.

11. The legislature has constitutional power to enable the council to legislate on matter within the scope of the charter, notwithstanding the constitution has declared that legislative power shall be vested in a senate, house of representatives and the governor. Mayor et al. vs. Morgan, 7 Martin (N. S.), page 1, Louisiana.

12. Railway companies with yards or terminals in cities of the state may, consistently with due process of law, be forbidden by a state statute to conduct switching operations across public crossings in cities of the first and second class with a switching crew of not less than one engineer, a fireman, a foreman, and three helpers, although the statute creates an exemption in favor of railways less than 100 miles in length, the crews of which may operate over the same identical crossings.

St. Louis, I. M. & S. Ry. Co. vs. State of Arkansas, 240 U. S. 518; 60 L. Ed. 776.

13. It will be necessary to show that a railway system, as a whole, would operate at a loss, and not merely that a certain line of the system was operating for less than cost, in order to plead that property is being taken without due process of law or to deny the equal protection of the law. Atlantic Coast Line Railroad Company vs. North Carolina Corporation Commission, 1-27; 51 L. Ed. 933-945.

14. State legislatures may not only exercise their sovereignty directly, but may delegate such portions of it to inferior legislative bodies as, in their judgment, is desirable for local purposes. Walla Walla vs. Walla Walla Water Co., 172 U. S. 1, 9; 43 L. Ed. 341; Wright vs. Nagle, 101 U. S. 791; 25 L. Ed. 921.

15. It is not the province of the courts to take issue with the lawmakers as to the wisdom or necessity of a statute or ordinance enacted ostensibly in the exercise of the police power, unless the said enactments have no real or reasonable relation to public safety, public health, or morals—abuses of the police power—under the pretense of promoting public safety, health, or morals. City of Shreveport, Louisiana, vs. W. A. Sullivan, 142 La. Rep. 573 (Louisiana).

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## ARGUMENT.

Ordinances which clearly convey their meaning are not void for uncertainty. Perhaps Section 1 of the ordinance is inartistically drawn, but the ordi-

nance in its entirety shows its purpose, and clearly means to punish the owners or superintendents who may violate its provisions.

On the question of its reasonableness, it is clear that the Council has not abused its discretion in deeming it for the welfare of the city to require both a motorman and a conductor on each car. They have evidently understood the meaning of the ordinance, having observed it since April 9, 1907, until quite recently, and have been granted additional franchises since that time, without any permission for its violation in such grants.

The General Assembly of Louisiana in 1914 (Act 150) required a course of ten days' training for both motormen and conductors. The public is entitled to convenience and comfort in traveling. To obtain this it is necessary to have two alert and competent men in charge of cars. The public is entitled to be safeguarded against the dangers incident to a one-man system. The operation of a street car by electricity is itself dangerous and is considered a hazardous occupation.

The motorman is charged with the care of his

motor, its appliances and its operation, and is held to a strict accountability for the working condition of the front-end equipment. He must watch the headlights, and mainly must keep a sharp lookout to prevent accidents. This alone requires his almost undivided attention. He must be familiar with the mechanical and electrical equipment of the cars; must manage a motor; replace a fuse, or make other needed temporary repairs on his route. He must also watch for railroad crossings and gates; must guard against the frogs and switches, and be careful to ring gongs. They must shut off currents while passing insulated crossings and circuit-breakers; they must observe the schedule, remember orders, and observe numerous rules.

The conductor's duties are perhaps even more exacting than those of the motorman. It is the conductor's duty to direct the movements of the car and generally control its operation. He must look constantly to the welfare of the passengers in their boarding the cars or leaving same. He must protect the passengers against drunken and disorderly persons, and prevent boisterous conduct. He should lookout for the old and feeble and for children;

answer all questions with reference to street crossings, etc.; must call the streets, depots, etc., and see that the races are separated in accordance with the provisions of law. He must guard the windows and close same in bad weather, prevent spitting on the floor or walls of the car, and hold himself at all times in readines to assist in any way to promote the general convenience and comfort of the passengers in his charge.

We respectfully submit that the numerous duties devolving upon a motorman and conductor should not be heaped upon one man alone. The responsibility is too great. Conditions vary in the different cities. The City Council of Shreveport believes that conditions here require the services of two men. The hours are long, and the pay is not too much. A considerable number of country people are constantly in Shreveport and are unfamiliar with the ways and workings of street cars, and these need guidance and help more than would be required in a larger city. In certain parts of Shreveport, particularly on certain days, the traffic is congested and difficult to handle as would be on the busiest corner of a much larger city.

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We do not attach much importance to the "plea

of poverty" made by the plaintiff in error in this case. The Shreveport Railways Company is one of the richest and most independent corporations in North Louisiana, and needs neither aid nor sympathy. They will not become bankrupt by furnishing sufficient men to their cars to provide for a safe and efficient service. Indeed, it would seem that the danger of accidents would make efficient service cheaper in the long run.

A lesser number of employes will cut down their pay-roll. A difference of opinion between the company's officials and the law-making power of the City of Shreveport as to the efficiency of a one-man car could scarcely be construed as a taking of the corporation's property without due process of law.

The lines of the Shreveport Railways Company extend over various portions of the city, each of which converge on Texas Street, the main thoroughfare of the city. There is no evidence in the record showing that the company was operating at a loss, even on the Allendale Line. Nor is there a particle of evidence that the system, as a whole, was not making money. That being the case, the plaintiff in error has not come within the opinion in the case of

the Atlantic Coast Line, referred to in the syllabus of this brief.

We submit that for the reasons herein given, the judgment of the lower courts should be affirmed.

Respectfully submitted,

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